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2 ORIGINAL

COMMONWEALTH OF VIRGINIA

vs.

STATE OF WEST VIRGINIA

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IN THE SUPREME COURT OF THE UNITED STATES.

ORIGINAL, No ——.

COMMONWEALTH OF VIRGINIA

vs.

STATE OF WEST VIRGINIA.

1 To the Chief Justice and the Associate Justices of the Supreme Court of the United States:

The Commonwealth of Virginia, by William A. Anderson, her attorney-general, brings this, her bill, against the State of West Virginia, and shows to the Court that:

I.

On the first day of January, 1861, your Oratrix was indebted in about the sum of $33,000,000.00 upon obligations and contracts made in connection with the construction of works of internal improvement throughout her then territory. By far the greater part of this indebtedness was shown by her bonds and other evidences of debt, given for the large sums of money which she from time to time had borrowed and used for the above purpose; but a portion of her liabilities though arising under contracts made before that date, had not then been covered by bonds issued for their payment.

In addition to the above liability to the general public, there was a large indebtedness evidenced by her bonds and other liabilities held by and due to the Commissioners of the Sinking Fund and the Literary Fund of the State, as created under her laws amounting, the former to $1,462,993.00, and the latter to $1,543,669.05 as of the same date.

The official reports and records showing the exact character and amounts of the public debt thus contracted and how the same was created, are referred to, and will be produced upon a hearing of the case.

2 ## II.

That portion of the territory embraced in what constitutes the present territorial limits of Virginia was prior to that date devoted

mainly to agriculture, and to some extent to grazing and manufacturing, which afforded its chief sources of revenue, while that portion included in what now constitutes the State of West Virginia had vast potentialities of wealth and revenue in the undeveloped stores of minerals and timber, which had been known for many years prior to the date named, and their prospective values, if made accessible to the markets of the country, were understood to be well nigh beyond computation. It was to hasten and facilitate the development of these sources of wealth and revenue by the construction of graded roads, bridges, canals and railways, extending through the State from tidewater towards the Ohio river, that the Commonwealth of Virginia, in the first quarter of the Nineteenth century, entered upon a system of public internal improvements, which it was contemplated should include the entire territory of the State, and embraced in its design the construction of public works adapted, not to the needs of any one portion of the State alone, but of the entire State, as a unit of interest. The larger part of these works were constructed East of the Appalachian range, as leading up to the undeveloped territory West thereof, but a very considerable portion of them were, at an expense of several millions of dollars, constructed West of said range within the territory now included in the State of West Virginia; and the completion of some of the main lines of improvement beyond the said range and through to the Ohio river,
since the first day of January, 1861, has increased to a very
3 great and material extent the values of real estate, including coal and timber, in the said territory now included in West Virginia, thus carrying into effect the original scheme of improvement, which could not have been done had not the lines East of said range been first constructed; and your Oratrix believes and avers that the property values within the limits of West Virginia have been enormously enhanced in a large measure by reason of these improvements. The money appropriated to the payment of the annually accruing interest on the said debt, prior to January 1st, 1861, and to the formation of the Sinking Fund for the ultimate redemption thereof, was derived from taxes imposed upon the property subject to taxation throughout the entire State. The first of this indebtedness to be contracted was a small amount borrowed by the State in the year 1820 and the debt was thereafter from time to time continued and increased by renewals and new loans until it reached the amount above stated in 1861.

III.

The Commonwealth of Virginia was induced to enter upon the construction of this general system of internal improvement, in a very large measure for the purpose of developing the aforesaid resources of the Western portion of the State, now constituting the State of West Virginia, thereby ameliorating the condition of her citizens residing therein; and it was with this view that she took upon herself the burden of the public debt for which her bonds were issued, without which debt such improvements could not have been

undertaken. In corroboration of this view it will appear from
4 an inspection of the legislative records of the State, where the vote carrying the appropriations for such public improvements was recorded, that in nearly every instance a majority of those members of the House and Senate of the original State, who then represented the counties now composing West Virginia, voted for such appropriations. Indeed it appears from those records that a great majority of the Acts of the legislature of Virginia under which said indebtedness was created, would have failed of their passage, had the representatives from the counties embraced in what is now West Virginia opposed their enactment, and that a very large proportion of said indebtedness was actually contracted over the votes of a majority of the representatives from the counties and cities embraced in the limits of the present State of Virginia. This will be found to be true, not only in the legislature for one single session, but in the legislatures for many successive years, thus showing it to have been the fixed policy of the people in that portion of the State now constituting West Virginia to participate in, support and carry out this general plan of internal improvements in the State.

IV.

The development of this system of public improvements thus entered upon was, from its character and extent, necessarily progressive, and the same extended with the general growth and increasing needs of the State, and was incomplete, as above stated, in 1861, though a very considerable portion of such improvements had, prior to that time, been constructed as above stated, in the territory now constituting West Virginia, in order to meet the needs of the people of that portion of the State for their local purposes. As early
5 as the year 1816 a Board of Public Works was created by law for the State, the members of which were elected by the voters of the State at large, and this Board had in charge the construction and supervision of all the works of public improvement in this State. The annual reports of this Board will be referred to for information as to the character, extent, cost and location of the public works and internal improvements constructed in the State prior to January 1st, 1861. The amounts expended upon the construction of these works in what is now West Virginia can only be accurately ascertained by an examination of the numerous entries in the records of this Board extending through a number of years and showing such expenditures as made from time to time.

V.

On the 17th of April, 1861, the people of Virginia, in general convention assembled, adopted an ordinance by which it was intended to withdraw Virginia from the Union of the States. From this action a considerable portion of the people of Virginia dissented, and organized a separate government which was known and recognized by the government of the United States as the "Restored State of Virginia," and will be hereafter referred to in this bill as the "Restored State."

VI.

On the 20th day of August, 1861, the Restored State of Virginia, in convention assembled, in the city of Wheeling, Virginia, adopted an ordinance to "provide for the formation of a new State out of the portion of the territory of this State:" Section 9 of which ordinance was as follows, to-wit:

6 "9. The new State shall take upon itself a just proportion of the public debt of the Commonwealth of Virginia, prior to the first day of January, 1861, to be ascertained by charging to it all the state expenditures within the limits thereof, and a just proportion of the ordinary expenses of the State government since any part of said debt was contracted, and deducting therefrom the moneys paid into the Treasury of the Commonwealth from the counties included within the said new State during said period. All private rights and interests in lands within the proposed State, derived from the laws of Virginia prior to such separation shall remain valid and secure under the laws of the proposed State, and shall be determined by the laws now existing in the State of Virginia."

VII.

On the 31st day of December, 1862, an Act was passed by the 37th Congress of the United States providing that the new State thus formed in pursuance of the ordinances of the Wheeling convention above referred to, should, upon certain conditions, be admitted into the Union by the name of West Virginia, with a constitution which had theretofore been adopted for the new State by the people thereof, such conditions being that a change should be made in such proposed constitution in regard to the liberation of slaves therein; and it was provided by this Act of Congress that whenever the President of the United States should issue his proclamation stating the

7 fact that such change had been made and ratified, thereupon the Act admitting the new State into the Union should take effect sixty days after the date of such proclamation. Such proclamation declaring these conditions to have been complied with was duly made by President Lincoln on April 20th, 1863, and West Virginia, in conformity therewith and by the operation of said Act of Congress, was admitted into the Union as a State on the 20th day of June, 1863; and thereupon the State of West Virginia became fully organized, and each of its departments of government commenced operation on the date last named.

VIII.

Pending the admission of the State of West Virginia to the Union the General Assembly of the Restored State of Virginia passed February 3, 1863, the following Act:

"That all property, real, personal and mixed, owned by, or appertaining to this state, and being within the boundaries of the proposed State of West Virginia, when the same becomes one of the United States, shall thereupon pass to, and become the property of the State of West Virginia, and without any other assignment, conveyance or

transfer or delivery than is herein contained, and shall include among other things not herein specified all lands, buildings, roads, and other internal improvements or parts thereof, situated within said boundaries, and vested in this state, or in the president and directors of the literary fund, or the board of public works thereof, or in any person or persons for the use of this state, to the extent of the interest and estate of this state therein; and shall also include the interest
8 of this state, or of the said president and directors, or of the said board of public works, in any parent bank or branch doing business within said boundaries and all stocks of any other company or corporation, the principal office or place of business whereof is located within said boundaries, standing in the name of this state, or of the said president or directors, or of the said board of public works, or of any person or persons, for the use of this state.

5. That if the appropriations and transfers of property, stocks, and credits provided for by this act, take effect, the State of West Virginia shall duly account for the same in the settlement hereafter to be made with this state, provided that no such property, stocks and credits shall have been obtained since the reorganization of the state government."

Your oratrix is informed, believes, and so charges, that the property which was by the operation of this Act appropriated and transferred from the State of Virginia to the State of West Virginia, and which was subsequently received and enjoyed by the State of West Virginia, consisted of a number of items, and the value of it amounted, in the aggregate, to several millions of dollars, the exact amount your Oratrix is unable at this time more definitely to ascertain and state. That of the bank stocks alone, which were transferred under the operation of this Act, the State of West Virginia realized and received into her Treasury from the sale thereof about Six Hundred Thousand Dollars; and that no part of the property
9 so received by West Virginia had been obtained by Virginia since April, 1861.

IX.

And by a further Act of the General Assembly of the Restored State of Virginia passed on the next day, February 4th, 1863, it was enacted:

"1. That the sum of One Hundred and Fifty Thousand Dollars be, and is hereby appropriated to the State of West Virginia out of moneys not otherwise appropriated, when the same shall have been formed, organized and admitted as one of the States of the United States.

2. That there shall be, and hereby is appropriated to the said State of West Virginia when the same shall become one of the United States, all balances, not otherwise appropriated, that may remain in the treasury, and all moneys not otherwise appropriated, that may come into the treasury up to the time when the said State of West Virginia shall become one of the United States; provided, however, that when the said State of West Virginia shall become one of the United States, it shall be the duty of the auditor of this State, to make a statement of all the moneys that up to that time, have been

paid into the treasury from counties located outside of the boundaries of the said State of West Virginia, and also of all moneys that up to the same time, have been expended in such counties, and the unexpended surplus of all such moneys shall remain in the treasury and continue to be the property of this State."

And this last named sum of One Hundred and Fifty Thousand Dollars, together with other sums belonging to the State of Virginia, were turned over to and received or collected by the new State of West Virginia after its formation as aforesaid.

X.

The Constitution of the State of West Virginia, which became operative and was in force when she was admitted into the Union, contained the following provisions:

By Section 5 of Article VIII. of said Constitution it was provided:

"5. No debt shall be contracted by this State except to meet casual deficits in the revenue, to redeem a previous liability of the State, to suppress insurrection, repel invasion, or defend the State in time of War."

And by section 7 of Article VIII. it was provided:

"7. The legislature may, at any time, direct a sale of the stocks owned by the State, in banks and other corporations, but the proceeds of such sale shall be applied to the liquidation of the public debt, and hereafter the State shall not become a stockholder in any bank."

And by section 8 of Article VIII. it was provided:

"8. An equitable proportion of the public debt of the Commonwealth of Virginia prior to the first day of January, 1861, shall be assumed by this State, and the legislature shall ascertain the same as soon as may be practicable and provide for the liquidation thereof by a sinking fund sufficient to pay the accruing interest and redeem the principal within thirty-four years."

At the time the Constitution containing these provisions was adopted, West Virginia did not owe, and could not have owed, any "public debt" or "previous liability," except for her just, contributive proportion of the public debt of the original State of Virginia, and for the money and property of the original State which had been transferred to and received by her under the Acts of the General Assembly of the Restored State of Virginia above set forth. By the provisions of Section 8 of Article VIII., above cited, she expressly assumed her equitable proportion of the debt of the original State as it existed prior to the first day of January, 1861. By Section 5 of the same Article VIII., above set forth, her Constitution forbade the creation of any debt "except to meet casual deficits in the revenue, to redeem a previous liability of the State," &c., and there was not and could not have been any such "previous liability," except her portion of the debt of the original State, and her liability for the money and property of the original State which had been transferred to and received by her under the Acts of the General Assembly of the Restored State. And Section 7 of the same Article of her Constitution, above cited, authorized a sale of the stocks owned by the State, in banks and other corporations, the proceeds to be applied to the liquidation of the

public debt; and she had no such stocks, except those acquired, as above stated, from the original State. This section of her constitution also expressly required the proceeds of such sale to be applied to her public debt, which public debt could only have been her pro-
12 portion of that of the original State of Virginia, and her liability for the money and property of the original State which had been transferred to her.

XI.

After the year 1865 and prior to the year 1872 attempts were made at different times by the public authorities of both the Commonwealth of Virginia and the State of West Virginia, respectively, to ascertain their contributive proportions of the common liability resting upon them for the public debt of Virginia, contracted prior to January 1st, 1861; but all such attempts proved ineffectual and vain, and no accounting or settlement of any kind was ever had between the two States in regard to this debt.

XII.

The efforts looking to a settlement by the concurrent action of the two States having proved abortive, and your Oratrix being anxious to adjust the portion of the common debt which it was right that she should assume and pay, upon terms just and equitable alike to the public creditors and to West Virginia, made several efforts to effect such a settlement.

The first of these was made by the General Assembly which was chosen at the close of the period of "destruction and reconstruction," which, following closely upon the period of disastrous war, had inflicted upon her people injuries and losses, the harmful effects of which were then by no means realized.

The purpose of the representatives of the Commonwealth, then just emerging from conditions which had impoverished her people and paralyzed their productive energies, to assume and pay
13 to the utmost every dollar which her most exacting creditor could demand of her, was expressed in the Act of her General Assembly, approved March 30, 1871.

By the terms of settlement embodied in this Act, your Oratrix undertook to give her obligations bearing 6% interest for two-thirds of the principal, and for two-thirds of the past due interest, and also for two-thirds of the interest on that accrued interest, which accrued interest to the extent of nearly $8,000,000, had been funded after the War in new bonds of Virginia, thus capitalizing at 6% not only the interest, but interest upon that interest.

It was soon apparent that Virginia had by this measure assumed a heavier burden than she was able to bear, and so other plans for the settlement of the State debt were attempted by the Acts of the General Assembly of the Commonwealth approved March 28, 1879, and February 14, 1882, until at length a final and satisfactory settlement of the portion of the debt of the original State which Virginia should assume and pay was definitely concluded by the Act of February 20, 1892. Your Oratrix will file copies of each of the Acts of her

General Assembly herein mentioned as exhibits to this bill, and to be read as part hereof.

XIII.

As farther indicating the great burden which your Oratrix, notwithstanding the disaster and loss above referred to, has assumed and met on account of the common debt of the undivided State, she shows your Honors that, since January 1st, 1861, she has actually paid off, retired and discharged, or assumed and given her new outstanding obligations for the aggregate sum of over Seventy-
14 One Million Dollars, as will more particularly appear from a statement thereof filed as an exhibit herewith and herein after referred to as Exhibit Number 7.

It is proper in this connection to call attention to the fact that, while your Oratrix has made this large contribution towards the settlement of the common debt, West Virginia has not paid one dollar thereof; and although in the early years of her history she repeatedly conceded that there was some portion of that debt which should equitably be borne by her, her properly constituted authorities have for a number of years refused to recognize that any liability whatever rested upon her, on that account, and have declined even to enter into an accounting or to treat with your Oratrix in reference thereto.

It would seem from the above statement that Virginia has already done as much under all the circumstances as she could be fairly expected to do towards paying off the common public debt of the old State. Such was the view and purpose of the General Assembly in the several Acts above recited.

A question may be raised as to whether such was the effect of the language used in the Act of March 30, 1871, with respect to the certificates issued thereunder; but the great mass of the creditors entitled to whatever may be due upon the unfunded obligations of the undivided State, have in effect agreed, as will be hereinafter shown, to waive any such question, and to accept the adjudication of this Court in this cause against West Virginia in full discharge of all their claims, thus giving that effect to the Act of March 30, 1871, which it was the purpose of your Oratrix that it should have.

15

XIV.

By each of the Acts for the settlement of her debt above recited, it was provided that the bonds of undivided Virginia so far as not funded in the new obligations given by your Oratrix, should be surrendered to and held by your Oratrix, who either by the express terms of the settlement provided for by said Acts, or as a just and equitable consequence therefrom, received and holds said original bonds so far as unfunded, in trust for the creditor who deposited the same with her, or his assigns; and certificates to this effect were given by your Oratrix to each creditor whose old Virginia bond was so surrendered to her.

Having as an essential part of the contract for the adjustment of the common debt of the original State entered into this fiduciary relation in reference to these bonds, it became her obligation of duty

to the creditors who had confided their securities to her keeping, as well as to her own people, whose credit and fair name required that these obligations of the old State should be fairly and honorably adjusted, to do all in her power to bring about a determination of West Virginia's just liability in respect thereto, and if possible the recognition and settlement of the same by that State.

Only after exhausting every means of amicable negotiation, and having her overtures to that end repeatedly refused, and as a last resort, has your Oratrix been constrained at length reluctantly to apply to this, the only tribunal which can afford relief, for an adjudication and determination of this question, of such vast importance to your Oratrix and to all of her people.

XV.

All of the bonds and obligations and other evidences of the indebtedness of the original State of Virginia outstanding and contracted on January 1, 1861, as stated in paragraph I of this bill, except a comparatively insignificant sum, not amounting to one per cent of the aggregate of those liabilities, have been taken up and are now actually held by your Oratrix, and she has the right to call upon West Virginia for a settlement with respect thereto. They are too numerous and involve too great a number of transactions running through many years, for it to be practicable to exhibit them here in detail, but the original bonds and other evidences of indebtedness so paid off or retired and now held by your Oratrix, will, when it shall be proper to do so, be exhibited to the Master, who shall take the accounts hereinafter prayed for.

XVI.

Of the evidences of indebtedness representing principal and interest of the liabilities of Virginia contracted before her dismemberment, those so paid off or retired by your Oratrix and now held by her in her own right, exclusive of the amounts represented by the certificates issued under the funding Acts aforesaid, amount in the aggregate, including the interest to be fairly computed thereon to this date, to a very large sum, considerably in excess of $25,000,000, by far the greater part of it being now, of course, on account of the interest computed thereon, at the rate of 6% per annum, the then legal rate in both States.

For all of these obligations taken up and payments made on account of the common debt, your Oratrix has in her own right,
17 a just claim against West Virginia for contribution to the extent of West Virginia's equitable liability therefor.

XVII.

In addition to the above bonds there were outstanding on the 1st day of January, 1861, certain obligations of the State of Virginia as guarantor upon some of the securities issued by internal improvement companies, which your Oratrix was called upon to provide for and settle. They were not comparatively of very large amount, however,

and the questions involved in connection therewith can be stated and settled in the account hereinafter prayed for to be taken between the two states; and in such accounts your Oratrix will also ask to have included all such items of debit against the State of West Virginia on account of the property and moneys of the original State which were received or appropriated by West Virginia which may not have been specifically or accurately stated herein. These items of accounting between the two States are so numerous and varied and extend throughout a period of so many years' duration that it is impossible from the nature of the case to state all of them in this bill; and the account between the two States can only be taken and settled, and the balance due your Oratrix thereon ascertained, under the supervision of a Court of Equity.

XVIII.

Your Oratrix charges that the liability of the State of West Virginia, for a just and equitable proportion of the public debt of
18 Virginia, as of the time when the State of West Virginia was created, rests upon the following among many grounds which might be indicated here:

First. The area of the territory now known as the State of West Virginia formed about one-third of the territory of the Commonwealth of Virginia when this public debt was created, and its population included about one-third of that of the original State at the time of its dismemberment. And the State of West Virginia did, by the acquisition and appropriation of such territory, with the population thereof, assume therewith liability for a just and equitable proportion of the public debt created prior to the partition of such territory.

Second. The liability of West Virginia for a just proportion of the public debt of the Commonwealth of Virginia, as it existed prior to the creation and erection of the State of West Virginia, forms part of her very political existence, and is an essential constituent of her fundamental law as shown in the said ordinance adopted at Wheeling on the 20th day of August, 1861, in which the method of ascertaining her liability on account of said debt is prescribed. And this liability is imbedded in the Constitution under which she was admitted as a State into the Federal Union, and was one of the conditions under which she was created a State and admitted into the Union.

Third. The State of West Virginia has further, by the repeated enactments and joint resolution of her legislature, recognized her liability for a just proportion of this debt.

Fourth. The State of West Virginia has, since her creation as a State, received from the State of Virginia real and personal property, amounting in value to many millions of dollars, and held and enjoyed the same, but upon expressed condition that she should
19 duly account for the same in a settlement thereafter to be had between her and the Commonwealth of Virginia.

Fifth. While the transfer of this property, real and personal, and also of certain moneys of the Commonwealth of Virginia, purport to

have been made to the State of West Virginia by the Act of "The Restored Government of Virginia," there were in fact represented in said "Restored Government" and in the legislature thereof no other people and no other territory than that which then, as now, constitute the State of West Virginia.

XIX.

The General Assembly of Virginia being anxious to effect a settlement of the portion of the common debt of the undivided State which remained unadjusted, and if possible to bring this about with the friendly co-operation and concurrence of West Virginia, adopted: "*A joint resolution to provide for adjusting with the State of West Virginia the proportion of the public debt of the original State of Virginia proper to be borne by the State of West Virginia, and for the application of whatever may be received from the State of West Virginia to the payment of those found to be entitled to the same,*" approved March 6, 1894. A copy of this resolution will be hereinafter shown as an exhibit to this bill, to be read as a part thereof.

Under this resolution a commission of seven members was appointed for the purpose of carrying into effect the objects expressed therein.

The efforts made by this Commission, acting under the above resolution to bring about a settlement with West Virginia having proved ineffectual, and the overture which the Commission, with the active co-operation of the Honorable Charles T. O'Ferral, the then governor of the Commonwealth made to the authorities of West Virginia for the purpose of bringing about a friendly adjustment having been declined, the General Assembly of Virginia passed the Act approved March 6, 1900, entitled "*An Act to provide for the settlement with West Virginia of the proportion of the public debt of the original State of Virginia proper to be borne by West Virginia, and for the protection of the Commonwealth of Virginia in the premises,*" the purpose of which Act is sufficiently set forth in its title, and a copy of the Act will also be hereinafter shown as one of the exhibits herewith filed.

XX.

The Commission acting under said last mentioned Act made most earnest efforts to bring about an amicable adjustment of the matters hereinbefore set forth with West Virginia, but all of their efforts in that behalf proved ineffectual and unavailing. An application to this Honorable Court being thus left as the only alternative for Virginia, this suit has been instituted at the request and direction of the said Commission, and in strict conformity with the provisions of the said Act of March 6, 1900, all of which will be more fully and completely shown by the Report of the said Commission dated January 6, 1906, made to the General Assembly of Virginia now in session, a copy of which Report and the documents accompanying the same, *are* referred to therein, will be exhibited as a part of this Bill.

XXI.

In order that the matters hereinbefore referred to may be more fully shown to the Court, your Oratrix files herewith certain exhibits (*seven* in number) which she pray may be read a- part of this bill, to-wit:

21 Exhibit Number 1. A copy of the said Act of the General Assembly of Virginia, of March 30, 1871, entitled an Act to provide for the funding and payment of the public debt.

Exhibit Number 2. A copy of the Act of the same General Assembly of March 28, 1879, entitled an Act to provide a plan of settlement of the public debt.

Exhibit Number 3. A copy of the Act of February 14, 1882, of the same General Assembly, entitled an Act to ascertain and declare Virginia's equitable share of the debt created before and actually existing at the time of the partition of her territory and resources, and to provide for the issuance of bonds covering the same, and the regular payment of the interest thereon.

Exhibit Number 4. A copy of the said Act of the same General Assembly, approved February 20, 1892, entitled an Act to provide for the settlement of the public debt of Virginia not funded under the provisions of an Act entitled, etc.

Exhibit Number 5. A copy of the said Joint Resolution of the said General Assembly of March 6, 1894, providing for the appointment of a Commission.

Exhibit Number 6. A copy of the said Act of March 6, 1900, under which the powers of the said Commission were enlarged and the institution of this suit authorized.

Exhibit Number 7. Showing amounts paid off since January 1, 1861, or assumed and now carried by Virginia on account of the old debt of the undivided State.

Exhibit Number 8. A copy of the report of the said Virginia Commission made to the General Assembly of that State, dated January 6, 1905, together with the accompanying papers.

22

XXII.

Forasmuch, therefore, as your Oratrix is remediless save in this form and forum, and to the end that the State of West Virginia may be duly served, through her Governor and Attorney-General, with a copy of this bill, your Oratrix prays that the said State of West Virginia may be made a party defendant to this bill, and required to answer the same, that all proper accounts may be taken to determine and ascertain the balance due from the State of West Virginia to your Oratrix, in her own right and as trustee as aforesaid; that the principles upon which such accounting shall be had may be ascertained and declared, and a true and proper settlement made of the matters and things above recited and set forth; that such accounting be had and settlement made under the supervision and direction of this Court by such Auditor or Master as may by the Court be selected and empowered to that end, and that proper and full reports of such accounting and settlement may be made to this Court; that the State of West Virginia may be required to produce

before such Auditor or Master, so to be appointed, all such official entries, documents, reports and proceedings as may be among her public records or official files and may tend to show the facts and the true and actual state of accounts growing out of the matters and things above recited and set forth, in order to a full and correct settlement and adjustment of the accounts between the two States; that this Court will adjudicate and determine the amount due to your Oratrix by the State of West Virginia in the premises; and that all such other and further and general relief be granted unto your Oratrix in the premises as the nature of her case may require or to equity may seem meet.

And your Oratrix will ever pray, &c.

WILLIAM A. ANDERSON,
Attorney General of Virginia.
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23 EXHIBITS WITH BILL.

In the Supreme Court of the United States.

Original.

COMMONWEALTH OF VIRGINIA
vs.
STATE OF WEST VIRGINIA.

24 EXHIBIT NUMBER 1.

CHAP. 282—An Act to Provide for the Funding and Payment of the Public Debt.

Approved March 30, 1871.

(Acts G. A. of Va. 1870-1, p. 378.)

Whereas in the formation of the state of West Virginia, there were included within its boundaries about one-third of the territory and population of the state of Virginia; and whereas, in the ordinance authorizing the organization of said state, it was provided that the said state shall take upon itself a just proportion of the public debt of the commonwealth of Virginia prior to the first day of January, eighteen hundred and sixty-one, which provision has not yet been fulfilled, although repeated and earnest efforts in that behalf have been made by this state, and will continue to be made as long as may be necessary; and whereas the people of this commonwealth are anxious for the prompt liquidation of her portion of said debt, which is estimated to be two-thirds of the same; and whereas it has been suggested that the authorities of West Virginia may prefer to pay that state's portion of said debt to the holders thereof and not to this state, as the constitution of this state provides; now, therefore,

to enable the state of West Virginia to settle her proportion of said debt with the holders thereof, and to prevent any complications or difficulties which might be interposed to any other manner of settlement, and for the purpose of promptly restoring the credit of Virginia by providing for the prompt and certain payment of the interest upon her proportion of said debt as the same shall become due; therefore,

1. Be it enacted by the general assembly of Virginia, That from and after the passage of this act, no bond, certificate, or other evidence of indebtedness, shall be issued for any portion of the debt of this state; nor shall any interest be paid upon any part or portion of said debt, except as hereinafter provided.

25 2. The owners of any of the bonds, stocks or interest certificates heretofore issued by this state, which are recognized by its constitution and laws as legal, except the five per centum dollar bonds, and what are known as sterling bonds, but including the stock of the old James river company, and the bonds of the James river and Kanawha company guaranteed by this state, may fund two-thirds of the amount of the same, together with two-thirds of the interest due or to become due thereon, to the first day of July, eighteen hundred seventy-one, in six per centum coupon or registered bonds of this state of the denominations of one hundred, and multiples thereof, dated that day, and to become due and payable in thirty-four years after date, but redeemable at the pleasure of the state, after ten years, the interest to be payable semi-annually on the first days of January and July in each year. The bonds shall be made payable to order or bearer, and the coupons to bearer, at the treasury of the state and bonds payable to order may be exchanged for bonds payable to bearer, and registered bonds may be exchanged for coupon bonds, or *vice versa*, at the option of the holder. The coupons shall be payable semi-annually, and be receivable at and after maturity for all taxes, debts, dues, and demands due the state, which shall be so expressed on their face; and the bonds shall bear on their face a declaration to the effect that the redemption thereof is secured by a sinking fund provided for by the law under which they are issued. The holders of the five per centum dollar bonds may in like manner fund the same in like bonds, bearing, however, five instead of six per centum interest. In the funding herein authorized, for any fractional sums less than one hundred dollars, certificates shall be issued bearing the same date and rate of interest, and payable at the same time as the bonds issued under this section; which certificates, in sums of one hundred dollars or any multiple thereof, shall be exchangeable for bonds of the character

26 herein authorized to be issued; and new certificates of like character may be issued for any fractional sums less than one hundred dollars which may remain in making such exchange.

3. Upon the surrender of the old and the acceptance of the new bond for two-thirds of the amount due as provided in the last preceding section, there shall be issued to the owner or owners, for the other one-third of the amount due upon the old bond, stock, or certificate of indebtedness so surrendered, a certificate bearing the same date

as the new bond, setting forth the amount of the bond which is not funded as provided in the last preceding section, and that payment of said amount with interest thereon at the rate prescribed in the bond surrendered, will be provided for in accordance with such settlement as shall hereafter be had between the states of Virginia and West Virginia in regard to the public debt of the state of Virginia existing at the time of its dismemberment, and that the state of Virginia holds said bonds, so far as unfunded, in trust for the holder or his assignees; and provided further, that until such final settlement with West Virginia, there shall be paid upon what are known as sterling bonds, in the manner now prescribed by law, two-thirds of the interest accruing on the principal of said bonds, after July first, eighteen hundred and seventy-one; and for the interest accrued to said date certificates dated on that day shall be issued, drawing the same rate of interest as the bonds, two-thirds of which shall be paid as provided to be paid on the bonds. The remaining one-third of unpaid interest, both on the bonds and certificates, shall be payable in money, and the principal of said certificates in new sterling bonds of the same character as the old, in accordance with such final settlement as shall be made with West Virginia.

4. The treasurer is hereby authorized and directed to forthwith cause to be prepared, engraved or lithographed, registered bonds and bonds with coupons and certificates of the character mentioned in the second and third sections of this act; and when prepared,
27 shall commence the issuance of the same as herein provided. The bonds and certificates shall be signed by the treasurer, and countersigned by the second auditor; the coupons shall be signed by the treasurer, or a fac simile of his signature shall be stamped or engraved thereon. Each denomination of bonds herein authorized to be issued, both registered and coupon, shall constitute a series, and the bonds of each series shall be numbered from one upwards, as they are issued; and the coupons in addition to the number of the bond to which they are attached, shall be numbered from one to sixty-seven. Each class of certificates authorized to be issued by this act shall be numbered, respectively, from one upwards, and in addition thereto, each certificate shall contain the number and date of the bond or certificate on account of which it is issued. Each bond, certificate of stock, and interest certificate, to be funded as herein provided, shall first be delivered to the second auditor, who shall calculate and determine the amount for which a bond shall be issued, and the amounts for which certificates shall be issued, under the second and third sections of this act; which calculations shall be endorsed, dated and signed by him on the back of such bond, certificate of stock, or interest certificate, and he shall cause a proper registry thereof, together with the date and number of the bond, certificate of stock, or interest certificate, to be made and kept in his office. After such endorsement and registration, the second auditor shall deliver the bond, certificate of stock, or interest certificate, to the treasurer, who shall thereupon deliver to him a bond or bonds and certificates of the character named in the second and third sections of this act, duly signed and numbered, for the several amounts,

respectively, according to said endorsement. The second auditor, after making a proper registry of said bond or bonds, and certificates to be kept in his office, shall deliver the same to the person entitled to them. The treasurer shall, by proper endorsement, written or stamped, upon each bond, certificate of stock, or interest cer-
28 tificate so surrendered and delivered to him, cancel the same, and endorse thereon the date of such cancellation, and shall preserve the same in his office until otherwise directed by law. The treasurer shall also have made and preserved in his office a proper registry of every bond and certificate delivered by him to the second auditor, and whenever a coupon bond shall be issued payable to the order of any person or firm, he shall secure and preserve the signature of such person or firm as a part of such registry whenever practicable.

5. Whatever sum may be realized from the claims of this state against Selden, Withers and Company, and the Chesapeake and Ohio Canal company, and from the sale or disposition of the stocks and bonds, and debts owned by the state in and against any and all railway and other improvement companies, and all sums which may be realized from the claims of this state against the United States, and from any sales of any real estate now belonging to the commonwealth, shall be paid into the treasury of the state to the credit of the sinking fund hereby authorized and created. In the year eighteen hundred and eighty, and annually thereafter, until all the bonds issued under and by authority of this act shall have been paid, there shall be levied and collected, the same as other taxes, a tax of two cents on the one hundred dollars of the assessed valuation of all the property, personal, real and mixed, in the state, which shall be paid into the treasury of the state to the credit of the sinking fund. The treasurer, the auditor of public accounts, and second auditor are hereby appointed commissioners of the sinking fund, and shall have (a majority acting) the control and management thereof, and shall annually, or oftener, apply whatever sum or sums may be to the credit of the sinking fund, to the purchase and redemption of bonds issued by authority of this act.

6. All necessary expenses incurred in the execution of this act shall be paid out of any moneys in the treasury not otherwise appropriated, on the certificate of the correctness of the same, signed by the
29 treasurer and second auditor, and approved by the governor.

7. This act shall be in force from and after its passage.

30 EXHIBIT NUMBER 2.

CHAP. 24—An Act to Provide a Plan of Settlement of the Public Debt.

Approved March 28, 1879.

(Acts G. A. of Va. 1878-9, p. 264.)

Whereas it is believed by the general assembly that the rate of interest heretofore agreed to be paid by the state on the public debt is greater than can be borne without destroying the industrial inter-

osts of the state; and whereas the council of foreign bondholders of London, England, and the funding association of the United States of America, limited, have, in view of this belief, expressed their willingness to jointly endeavor to obtain the consent of the creditors to an abatement in the rate of interest; and whereas it is highly expedient, in the best interest of the state, to secure an amicable settlement with the creditors by which the credit of the state may be restored and enhanced, and the aggregate amount of interest payable by the state reduced within limits which will not be too onerous to the population; therefore,

1. Be it enacted by the general assembly of Virginia, That to provide for funding the debt of the state, the governor is hereby authorized to create bonds of the state, registered and coupon, dated the first day of January, eighteen hundred and seventy-nine, the principal payable forty years thereafter, bearing interest at the rate of three per centum per annum for ten years, and at the rate of four per centum per annum for twenty years, and at the rate of five per centum per annum for ten years, payable in the cities of Richmond, New York or London, as hereinafter provided, on the first days of July and January of each year, until the principal is redeemed. The state shall have the option of redeeming any or all of said bonds by the payment of principal and accrued interest at any time after the expiration of ten years from the first day of January, eighteen hundred and seventy-nine, on public notice to the holders of its purpose to make such redemption. The coupons on said bonds shall be receivable at and after maturity for all taxes, debts, dues and demands due the state, and this shall be expressed on their face. The holder of any registered bond shall be entitled to receive from the treasurer of the state a certificate for any interest thereon, due and unpaid, and such certificate shall be receivable for all taxes, dues and demands due the state, and this shall be expressed on the face of the registered bonds and on the face of such certificate. All obligations created under this act shall be forever exempt from all taxation, direct or indirect, by the state, or by any county or corporation therein, and this shall be expressed on the face of the bonds. The said bonds shall be of the denominations of one hundred dollars, five hundred dollars, and one thousand dollars, at the option of the creditors respectively, and the bonds as well as their coupons shall be payable at Richmond and New York, or if desired, may be made payable in sterling at London, at the fixed rate of exchange of one pound sterling for five dollars. The bonds hereby authorized shall be issued only in exchange for the outstanding debt of the state, as hereinafter provided.

2. For purposes of designation, the outstanding indebtedness of the state is divided into two classes, as follows, to wit:

Class I, which shall be taken to include all tax-receivable coupon bonds, and all registered bonds and fractional certificates which are convertible under the act approved March thirtieth, eighteen hundred and seventy-one, into such tax-receivable coupon bonds.

Class II, which shall be taken to include all bonds funded under the act approved March thirtieth, eighteen hundred and seventy-one,

as amended by the act approved March seventh, eighteen hundred and seventy-two; and also two-thirds of the face value, with two-thirds of the unpaid accrued interest up to the first of July, eighteen hundred and seventy-one, on all unfunded bonds, including sterling bonds.

3. The outstanding indebtedness of the state shall be
32 funded in the new bonds, to be issued under this act, as follows: Bonds shall be presented for exchange with all coupons attached maturing after the date of presentation, and shall be exchanged at the face value of said bonds, dollar for dollar, for the new bonds, with all coupons attached maturing after the date of such presentation: Provided that the proportion of Class II, refunded, shall never exceed in amount one-third (⅓) of the total amount refunded, until eighteen million dollars of Class I have been retired. The new bonds to be issued may be coupon or registered, at the option of the holders, and at the like option coupon bonds may at any time be converted into registered bonds.

4. All due and unpaid interest may be funded under the provisions of this act at the rate of fifty cents on the dollar, and shall be fundable at that rate under the third section of this act, and taken, under the provisions of said section, in lieu of bonds of Class II.

5. If on or before the first day of May, eighteen hundred and seventy-nine, the council of foreign bondholders and the funding association of the United States of America aforesaid, shall file with the governor their assent to and acceptance of the terms of this act, the same shall be taken to be a contract between the state and the said corporations, and the governor shall forthwith provide for the preparation of the bonds provided for by this act. The said corporations may present for funding, and in the proportions hereinbefore provided, at least eight million of dollars of the outstanding obligations of the state prior to the first day of January, eighteen hundred and eighty; and during each period of six months, from and after the thirty-first — December, eighteen hundred and seventy-nine, they may present an additional amount of at least five millions of dollars, until the whole debt is funded; but any excess over said amounts, which may be presented during any of said periods may be estimated in requirement for the succeeding six months. So long as the said corporations shall present for funding the obligations afore-
33 said, in the amounts and in the periods aforesaid, they shall have the exclusive privilege of funding the outstanding debt under the provisions of this act: Provided that the said corporations shall arrange to receive the outstanding bonds at the city of Richmond, when the holders thereof shall so desire. But if the said corporations shall fail to file with the governor their assent and agreement as aforesaid by the first day of May, eighteen hundred and seventy-nine, or shall fail to present for funding the outstanding bonds in the proportions and amounts and during the periods hereinbefore specified, then the governor may, in his discretion, make a like contract with responsible parties for the funding of the debt of the state under this act.

6. The rules prescribed under the act approved March thirtieth,

eighteen hundred and seventy-one, in respect to preparing, signing and issuing the new bonds and coupons, regulating the same, and in taking in, cancelling and registering the old bonds, shall be observed by the officers of the treasury in the execution of this act, except so far as the same be modified by the provisions of this act: Provided that all bonds and certificates which may be necessary to be printed, shall be printed from a plate which shall be the property of the commonwealth, and shall remain in the keeping or under the control of the second auditor. Whenever an obligation of the state shall be presented to the second auditor to be funded under this act, he shall note the fact and date on the proper register in his office, shall punch a hole through the name of the second auditor, signed or countersigned thereto, and shall issue his warrant upon the treasurer for the new obligations required. There shall be endorsed upon the said warrant a description of the old obligations, and the calculation of principal and interest for which the new obligations are to be issued. The said old obligations and warrant shall be carried by the second auditor to the treasurer, who shall note the fact and date of funding on the proper register in his office, and if he shall find the warrant correctly drawn, shall sign the proper obligations to be issued, register the same in his office, clip therefrom the past-due coupons and punch the same, and deliver the said obligations to the second auditor, taking his receipt therefor upon his warrant. The second auditor shall countersign the obligations so delivered to him, register the same in his office, and deliver the same to the proper person, taking his receipt therefor. The treasurer shall jacket and file in his office the warrant upon which the new obligations were issued, with the surrendered obligations attached to said warrant, and shall number and date the jacket so as to make it easy for reference. But in cancelling and registering the bonds as above directed, in every bond and coupon surrendered under this act holes shall be punched in one or more places, and in such a manner as to render a new funding of the same impossible, and every bond and coupon so cancelled shall be filed for reference.

7. The owners of all classes of bonds mentioned in this act, who shall exchange their securities for the bonds created under this act, and who shall not have yet received certificates representing the remaining one-third of their principal and interest, due and payable by the state of West Virginia, shall receive certificates of a like character to those issued under the act of March thirtieth, eighteen hundred and seventy-one, when they make such exchange; and the state of Virginia will negotiate or aid the creditors holding all of such certificates issued under this act, or previous acts, in negotiating with the state of West Virginia for an amicable settlement of the claims of such creditors against the state of West Virginia. The acceptance of the said certificates for West Virginia's one-third, issued under this act, shall be taken and held as a full and absolute release of the state of Virginia from all liability on account of the said certificates.

8. The general assembly will, by necessary and appropriate legislation, provide for the prompt payment of the interest on the bonds issued under this act.

9. In the year eighteen hundred and eighty-five, and annually thereafter until all the bonds issued under and by authority of this act are paid, there shall be levied and collected the same as, and together with other taxes, a tax of two cents on the one hundred dollars of the assessed valuation of all the property, personal, real and mixed, in the state, which shall be paid into the treasury of the state to the credit of the sinking fund. The treasurer, the auditor of public accounts, and second auditor are hereby appointed commissioners of the sinking fund, and shall have (a majority acting) the control and management thereof, and shall annually, or oftener, apply whatever sum or sums may be to the credit of the sinking fund to the purchase and redemption of bonds issued under this act. All the certificates of debt which shall be funded, redeemed or purchased under this act shall be cancelled by the second auditor, and delivered by him to the treasurer of the commonwealth at the time of payment therefor, who shall carefully preserve the same in his office. All certificates of debt acquired under the operation of the sinking fund, created by the act of March thirty, eighteen hundred and seventy-one, shall also be cancelled and delivered.

10. Executors, administrators, and others acting as fiduciaries, may invest in the bonds issued under this act, and the same shall be considered a lawful investment.

11. The treasurer shall, upon the first days of July, eighteen hundred and seventy-nine, and January, eighteen hundred and eighty, and upon the same days in each year, pay or cause to be paid to the holders thereof the half-yearly interest then due upon each of the bonds of the commonwealth issued under this act.

12. Whenever there shall not be a sufficient amount of money in the treasury of the state to meet the accruing interest on the said bonds promptly, the auditor is hereby authorized and directed, by and with the advice of the governor of Virginia, to raise by temporary loan, to be returned out of the accruing revenues of the state, a sum sufficient to enable him to meet promptly the said interest as it accrues. And in case the auditor shall not be able to raise a sufficient sum for the said purpose by loans, he is hereby authorized and directed to issue non-interest-bearing certificates of indebtedness of this state, to be signed by himself and countersigned by the treasurer, and properly registered in the offices of the auditor and treasurer, for the sum of one dollar and multiples thereof, the same to be printed from plates, which shall be the property of the state, and to sell the same at not less than a minimum price to be fixed by the commissioners of the sinking fund, which shall not be less than seventy-five cents upon the dollar. The said certificates shall be receivable for all taxes, debts, dues and demands due the state, and this shall be expressed on their face. The amount of such certificates which may be issued at any one time shall be fixed by the commissioners of the sinking fund, and the proceeds of the sale thereof shall be devoted exclusively to the payment of interest as aforesaid. The auditor shall report regularly to the general assembly the amount and character of certificates issued under this act, and the net proceeds thereof. In case the auditor shall not be able to

borrow the sums needed as aforesaid without security, he shall be and is hereby authorized to hypothecate such amounts of the said certificates as may be fixed on by the commissioners of the sinking fund, at a value to be fixed as aforesaid, but in no case to be at a less value than seventy-five cents upon the dollar; and in case of a sale of said certificates, whether they may have been so hypothecated or not, they shall be offered for sale in suitable and proportionate amounts in the different counties, towns and cities of this state, so far as practicable, under regulations to be fixed by the commissioners of the sinking fund. The said certificates shall be received by the treasurer of the state, and be cancelled on receipt thereof, under the same regulations and prohibitions now existing in relation to coupons for interest on the public debt, except that no tax shall be deducted therefrom, and the fact of their cancellation shall be noted on the said registers.

13. The act approved March fourteenth, eighteen hundred
37 and seventy-eight, and all acts inconsistent with the provisions of this act, are hereby repealed.

14. This act shall be in force from its passage.

38 EXHIBIT NUMBER 3.

CHAP. 84.—An act to ascertain and declare Virginia's equitable share of the debt created before and actually existing at the time of the partition of her territory and resources, and to provide for the issuance of bonds covering the same, and the regular and prompt payment of interest thereon.

Approved February 14, 1882.

Preamble.—Whereas to the end which this act comprehends, a full statement of the debt is essential; and whereas the following has been carefully made up from the records of the second auditor's office of the State, it is confidently submitted as presenting a true state of the account between the State and her creditors—the account is as follows:

A STATEMENT OF THE PUBLIC DEBT OF THE STATE OF VIRGINIA.

		Interest.	Principal.
	Principal outstanding at this date:		
1861, January 1st.	Sterling debt bearing 5 per cent. interest	$1,972,000 00	
	Dollar debt bearing 6 per cent. interest	29,533,582 90	
	Debt guaranteed bearing 6 per cent. interest	294,130 00	
	Total principal		$31,800,712 90
	Interest:		
	Past due and uncalled for at this date	101,023 63	
	Maturing at this date, January 1st, 1861	944,156 38	
	Total interest	$1,045,183 01	
1863. July 1st.	The State of West Virginia was formally admitted into the Union June 20th, 1863. The property and resources of Virginia, upon which the above debt has been founded, were, by this partition of the old State, reduced, one-third of her territory and one-fifth of her population going to form West Virginia. This and the consequences of war to her and her people made a loss of full $500,000,000 of property, and her taxable values were reduced from $723,000,000 to $336,000,000, and her annual revenues from over $4,000,000 to $2,500,000.		
39	*Principal July 1st, 1863:*		
	Sterling debt bearing 5 per cent. interest	1,973,000 00	
	Dollar debt bearing 6 per cent. interest	29,827,712 90	
	Bonds issued since January 1st, 1861, in discharge of debts contracted, and appropriations made prior to that date	1,340,500 02	
	Total principal July 1st, 1863		33,141,212 92
	Interest July 1st, 1863:		
	Past due January 1st, 1861, and uncalled for	1,045,183 01	
	Accrued between January 1st, 1861, and July 1st, 1863, inclusive	4,909,533 07	
	Total interest to July 1st, 1863, inclusive	5,954,716 08	

1863, July 1st.	Two-thirds of the above debt, principal and interest, to this date is assumed as Virginia's equitable portion, in consideration of the partition of her territory, population, and resources, upon the well established principle that debt in such cases follows territory. Upon that basis, Virginia's portion of the debt of the entire State is—				
	Principal:				
	Two-thirds of $1,973,000 sterling debt		1,315,333 34		
	Two-thirds of $31,168,212 92 dollar debt		20,778,808 62		
	Total principal, two-thirds, to July, 1863, inclusive				22,094,141 96
	Interest:				
	Two-thirds of $5,954,716 08, amount in arrears at that date, inclusive		3,969,810 72		
	Less amount of interest paid by Virginia since January 1st, 1861, exclusively out of revenues of the present State of Virginia, the territory and resources of West Virginia being inaccessible during that period, and contributing nothing thereto		3,662,434 55		
	Balance of interest due and unpaid July 1st, 1863, inclusive			307,376 17	
1871, July 1st.	Principal July 1st, 1863, in sterling bonds as above		1,315,333 34		
	Principal July 1st, 1863, in dollar bonds as above	20,778,808 62			
	Less amount of dollar bonds redeemed between July 1st, 1863, and this date	3,710,449 67			
	Total dollar bonds		17,068,358 95		
	Total principal				18,383,692 29
	Interest from July 1st, 1863, to July 1st, 1871, inclusive:				
	On $1,315,333 34 sterling bonds at 5 per cent		526,133 28		
	On $20,778,808 62 dollar bonds at 6 per cent		9,973,828 14		
			10,499,961 42		
	Less amount covering average time of the redemption of the $3,710,449 67 dollar bonds redeemed	445,257 58			
	Less amount paid in money during that period—July 1st, 1863, to July 1st, 1871, inclusive	3,594,289 11			
			4,039,546 69		
				6,460,414 73	

40	*Interest:*				
	Two-thirds of $5,954,716 08, amount in arrears at that date, inclusive....		3,969,810 72		
	Less amount of interest paid by Virginia since January 1st, 1861, exclusively out of revenues of the present State of Virginia, the territory and resources of West Virginia being inaccessible during that period, and contributing nothing thereto..		3,662,434 55		
	Balance of interest due and unpaid July 1st, 1863, inclusive			307,376 17	
1871, July 1st.	Principal July 1st, 1863, in sterling bonds as above.....		1,315,333 34		
	Principal July 1st, 1863, in dollar bonds as above	20,778,808 62			
	Less amount of dollar bonds redeemed between July 1st, 1863, and this date.....	3,710,449 67			
	Total dollar bonds.		17,068,358 95		
	Total principal.....				18,383,692 29
	Interest from July 1st, 1863, to July 1st, 1871, inclusive:				
	On $1,315,333 34 sterling bonds at 5 per cent....		526,133 28		
	On $20,778,808 62 dollar bonds at 6 per cent.....		9,973,828 14		
			10,499,961 42		
	Less amount covering average time of the redemption of the $3,710,449 67 dollar bonds redeemed.....	445,257 58			
	Less amount paid in money during that period—July 1st, 1863, to July 1st, 1871, inclusive	3,594,289 11			
			4,039,546 69		
				6,460,414 73	
	Add interest accrued to July 1st, 1871, as above.....		6,767,790 90		
	Total.....		18,041,288 93		
	Less amount paid between July 1st, 1871, and October 1st, 1881—in money.....	2,415,973 56			
	In coupons....	8,707,615 50			
	Less amount covering average time of the redemption of the $1,540,658 12 bonds redeemed.....	331,800 00			

Less tax-receivable coupons outstanding October 1st, 1881, and to be paid as part of the floating debt	895,722 00		
Less tax receivable coupons maturing in January and July, 1882	1,117,724 87		
Amount of interest (special):			
Redeemed and cancelled	380,110 02		
Total deductions		13,848,945 95	
Balance of interest to July 1st, 1882			4,192,342 98
Total debt to July 1st, 1882:			
Principal, as above			16,843,034 17
Interest, as above			4,192,342 98
Total			21,035,377 15
Including bonds held by the literary fund to the amount of $1,428,245 25, and interest on the same—in arrears July 1st, 1881, $516,322 19—and interest added from that date to July 1st, 1882, $85,694 71, making $602,016 90 included in the above sum of $4,192,342 98.			
Total debt			21,035,377 15

41 And whereas by this account it appears that Virginia owes her creditors, as of the first — July, eighteen hundred and eighty-two, including the bonds held by the Literary fund and arrears of interest thereon cast to such date, twenty-one million, thirty-five thousand, three hundred and seventy seven dollars and fifteen cents; and that she may cause to be issued her own bonds for the same, and provide for the certain payment of interest thereon: that is for her equitable share of the bonds known as consols, and here designated as class A, and whereof there are outstanding fourteen million three hundred and sixty-nine thousand nine hundred and seventy-four dollars and eighty-one cents; and for her equitable share of the bonds known as ten-forties, and here designated as class B, and whereof there are outstanding eight million five hundred and seventeen thousand six hundred dollars; and for her equitable share of the bonds known as peeler, and here designated as class C, and whereof there are outstanding two million three hundred and ninety-four thousand three hundred and five dollars and twelve cents; and for her equitable share of the interest thereon, designated as class D, and whereof there is now in arrears nine hundred and twenty-eight thousand eight hundred and eighty-seven dollars and forty-five cents, and counted to the first of July, eighteen hundred and eighty-two, makes the amount of such interest then to be in arrears, one million, seventy-two thousand five hundred and forty-five dollars and seventy-five cents; and for her equitable share of the bonds known as unfunded bonds—dollar and sterling—here designated as class E, and whereof there are now outstanding, computed at two-thirds, three million seven hundred and seventy-three thousand four hundred and ninety-three dollars and sixty-eight cents; and for her equitable share of the interest thereon now in arrears, two million six hundred and thirty-six thousand four hundred and forty-four dollars and thirty-four cents, and counted to the first of July, eighteen hundred and eighty-two, making as of that date (two hundred and twenty-six thousand four hundred and nine dollars and sixty-two cents more) the sum of two million eight hundred and sixty-two thousand eight hundred and fifty-three dollars and ninety-six cents, and here designated as class F; and for her equitable share of the bonds held by the commissioners of the Literary fund, whereof there are one million four hundred and twenty-eight thousand two hundred and forty-five dollars and twenty-five cents: and whereas the rate of interest which any people can safely undertake to pay must be determined by the measure of their productive resources; and whereas these have long been burdened by a rate of taxation which is conceded to be as high as can be endured; and whereas the means of prompt and certain payment should be apparent to the creditor, while the people have assurance for the support of government and the maintenance of their schools, as required by the constitution; and whereas the net revenues of the state, remaining and so derived, after providing for the proper and gradual liquidation of the balance of the
42 moneys heretofore diverted from the public free school fund, after liquidating gradually the arrearages to the Literary fund, and leaving some small margin for the immediate and subse-

quent exigencies, which are, and are likely to be demanded by the public welfare—notably in respect of the humane institutions now inadequate to the proper accommodation of that unfortunate class of every population—do not warrant the assumption of a larger rate of interest than three per centum upon the full amount of Virginia's equitable share of the debt of the old and entire state, as the same is ascertained and now formally declared by the foregoing account; therefore,

1. Be it enacted by the general assembly of Virginia, That the board of commissioners of the sinking fund of the state, be, and they are hereby empowered and directed to create bonds, registered and coupon, to such extent as may be necessary to comply with the provisions of this act.

2. The said bonds shall be dated July first, eighteen hundred and eighty-two, and be payable at the office of the treasurer of the state on the first day of July, nineteen hundred and thirty-two; provided that the state may, at any time and from time to time, after July first, nineteen hundred, redeem any part of the same, principal and interest, at par. In case of such redemption before maturity, the bonds to be paid, shall be determined by lot by said board of commissioners, and notice of the bonds so selected to be paid, shall be given in a newspaper published at Richmond, New York, and London, England, when interest from and after ninety days from the date of such publication in London, shall cease upon the bonds so designated to be paid.

3. The form of the bond shall be as follows, to-wit:

The commonwealth of Virginia acknowledges herself indebted to —— —— (in the case of a coupon bond to the bearer, and in the case of a registered bond, inserting the name of the person or corporation) in the sum of —— dollars, which she promises to pay in lawful money of the United States at the office of the treasurer of the state, Richmond, Virginia, on the first day of July, nineteen hundred and thirty-two, with the option of payment at par, principal, and interest, before maturity, at any time after July first, nineteen hundred; and interest at the office of the treasurer of the state, in such lawful money, on the first days of January and July, at the rate of three per centum per annum until paid (according to the tenor of the annexed coupons, in the case of coupon bonds).

In testimony whereof, witness the signature of the treasurer and the counter-signature of the second auditor, hereto affixed according to law.

—— ——, *Treasurer.*
—— ——, *Second Auditor.*

4. The form of coupon for coupon bonds shall be as follows, to-wit:

43 No. —— (of bond).

The commonwealth of Virginia will pay to bearer —— dollars, in lawful money of the United States, at the office of the treasurer, Richmond, Virginia, on the first day of January and July, alternately—

the first coupon to be payable January first eighteen hundred and eighty-three.

—— ——, *Treasurer.*

$——.

Each coupon to be impressed on the back with its number, in the order of maturity, from one forward.

5. The said board of commissioners are authorized to issue such bonds, in denominations of five hundred and one thousand dollars, as may be necessary to carry out the provisions of this act, each denomination to be of different tint: Provided that registered bonds may be issued of any denomination, multiple of one hundred; all registered bonds to be of the same tint; and they are authorized and directed to issue such bonds, registered or coupon, in exchange for the outstanding evidences of debt hereinbefore enumerated, including the bonds held by the literary fund, as follows, that is to say:

(*a*) For her equitable share of class A, at the rate of fifty-three per centum; that is to say, fifty-three dollars of the bonds authorized under this act, (principal and accrued interest, at par, from the preceding period of maturity to the date of exchange,) are to be given for every one hundred dollars, face, principal and accrued interest from the preceding semi-annual period of maturity to the date of exchange of such evidences of debt, and for any interest which may be past due and unpaid upon the same, funded bonds issued under this act may be given dollar for dollar.

(*b*) For her equitable share of class B, at the rate of sixty per centum, reckoning and accounting for any interest, as provided in the case of class A.

(*c*) For her equitable share of class C, at the rate of sixty-nine per centum, reckoning any current interest, at the date of exchange, as in the cases of classes A and B, and accounting for the same as provided in class D.

(*d*) For her equitable share of class D, at the rate of eighty per centum.

(*e*) For her equitable share of class E, at the rate of sixty-nine per centum, reckoning any current interest, at the date of exchange, as in the cases of classes A, B, and C, and accounting for the same as provided in class F.

(*f*) For her equitable share of class F, at the rate of sixty-three per centum.

(*g*) For her equitable share of the bonds of the Literary fund, as in the case of class C; her equitable share of the arrearages of interest—three hundred and seventy-nine thousand two hundred seventy dollars—to be paid in money.

6. For all balances of such indebtedness, constituting West Virginia's share of the old debt, principal and interest, in the settlement of Virginia's equitable share as aforesaid, the said board of sinking fund commissioners shall issue a certificate, as follows:

44 No. ——.

The commonwealth of Virginia has this day discharged her equitable share of the (registered or coupon, as the case may be) bond for —— dollars, held by ——, dated the —— day of ——, and numbered ——, leaving a balance of —— dollars, with interest from ——, to be accounted for by the state of West Virginia, without recourse upon this commonwealth.

Done at the capitol of the state of Virginia, this ——day of ——, eighteen ——.

—— ——, *Second Auditor.*
—— ——, *Treasurer.*

7. The said board of commissioners are empowered to issue for any fractional part of one hundred dollars of the indebtedness funded under this act, the following certificate:

Fractional Certificate.

Register No. —. Transaction No. —.

This certificate entitles the holder hereof to the sum of —— dollars, fundable at its face in the bonds of the commonwealth of Virginia, authorized by an act approved —— day of ——, eighteen hundred and eighty-two, when presented with certificates of like tenor or in conjunction with other evidences of debt fundable under said act in amounts of one hundred dollars and multiples thereof.

Done at the capitol of Virginia, this —— day of ——, eighteen hundred and eighty ——.

—— ——, *Second Auditor.*
—— ——, *Treasurer.*

The certificates so issued, shall be registered by the second auditor in a register kept for that specific purpose, giving the date and number of the transaction to which it relates, the amount of the same, and the name of the person or corporation to whom it was issued; and as such certificates are refunded, the same shall be canceled and preserved as herein provided in respect to the evidences of debt refunded.

8. All the bonds and certificates of debt and evidences of past-due and unpaid interest taken in under the provisions of this act, shall be canceled by the treasurer in the presence of the board of commissioners of the sinking fund as the same are required, and by the treasurer the same shall be carefully preserved until such time as the General Assembly may otherwise direct. A schedule of the bonds, certificates and other evidences of debt so canceled, from time to time, shall be certified by said board and filed with the treasurer for preservation.

9. All the coupons and registered bonds and fractional certificates issued under this act, shall be separately registered by the second auditor in books kept for the specific purpose; and in each case giving the date, number and amount of the obligations issued, and the name

of the person or corporation to whom issued, and the date, number, amount and description of the bond, bonds or indebtedness surrendered.

10. The plates from which the bonds and fractional certificates authorized by this act, are printed, shall be the property of the commonwealth, and shall remain in the keeping of the said board of commissioners of the sinking fund.

11. In the year eighteen hundred and ninety, and annually thereafter until all the bonds issued under and by authority of this act are paid, there shall be set apart of the revenue collected from the property of the state each year, two and one-quarter per centum upon the bonds at the time outstanding, which shall be paid into the treasury to the credit of the sinking fund; and the commissioners of the said sinking fund shall, annually or oftener, apply the same to the redemption or purchase (at a rate not above par) of the bonds issued under this act, and the bonds so redeemed shall be canceled by the said board, and the same registered by the second auditor in a book to be kept for the purpose, giving the number, the date of issue, the character, the amount, and the owner at the time of purchase of the bonds so redeemed and canceled; and in case no such purchase of bonds can be made, then the amount which can be redeemed shall be called in by lot as provided in section two of this act.

12. Executors, administrators and others acting as fiduciaries, may exchange any state bonds held by them as provided, for bonds issued under this act, when so authorized by the court having jurisdiction in the premises, and the same, when so made, shall be considered a lawful investment.

13. The treasurer of the commonwealth is authorized and directed to pay the interest on the bonds issued under this act, as the same shall become due and payable, out of any money in the treasury not otherwise appropriated.

14. All necessary expenses incurred in the execution of this act, shall be paid out of any money in the treasury not otherwise appropriated, on the warrants of the auditor of public accounts drawn upon the treasurer, on the order of the board of sinking fund commissioners.

15. That from and after the passage of this act, no bonds, certificates, or other evidences of indebtedness, shall be issued for any portion of the debt of this state, nor shall any interest be paid upon any part or portion of said debt, except as hereinbefore provided.

16. This act shall be in force from its passage.

46 EXHIBIT NUMBER 4.

CHAP. 325. An act to provide for the settlement of the public debt of Virginia not funded under the provisions of an act entitled An act to ascertain and declare Virginia's equitable share of the debt created before and actually existing at the time of the partition of her territory and resources, and to provide for the issuance of bonds covering the same, and the regular and prompt payment of the interest thereon, approved February 14, 1882.

Approved February 20, 1892.

(Acts G. A. of Va. 1891-92, p. 533.)

Whereas by a joint resolution of the general assembly of the state of Virginia, adopted on the third day of March, eighteen hundred and ninety, a commission was appointed on the part of Virginia to receive propositions for funding the debt of the state not funded under the act known as the "Riddleberger bill," approved February fourteenth, eighteen hundred and eighty-two, from a properly constituted representative of her creditors; and

Whereas said Virginia debt commission has submitted a report to the general assembly, wherein it appears that under a certain agreement, dated May twelfth, eighteen hundred and ninety, lodged with the Central trust company of New York, Frederick P. Olcott, William L. Bull, Henry Budge, Charles D. Dickey, junior, Hugh R. Garden, and John Gill, constituting a committee for certain of the creditors of Virginia, called the "Bondholders' committee," have proposed to said commission to surrender to the state in bulk not less than twenty-three million of dollars of the public debt, unfunded under said act approved February fourteenth, eighteen hundred and eighty-two, in exchange for an issue of new bonds, as hereinafter specified, the same to be apportioned between the several classes of creditors by a tribunal which the said creditors have themselves ap-
47 pointed; and that, in pursuance of said proposal an agreement has been entered into unanimously between the said commission and the said bondholders' committee, subject to approval by the general assembly, whereby in exchange for the said unsettled obligations of the state held by the public, which were issued prior to February fourteenth, eighteen hundred and eighty-two (exclusive of evidences of debt held by the public institutions of the commonwealth pursuant to law and by the United States,) together with the interest thereon to July first, eighteen hundred and ninety-one, inclusive, aggregating about twenty-eight million of dollars, there shall be issued nineteen million of dollars of new bonds, dated July first, eighteen hundred and ninety-one, and maturing one hundred years from said date, with interest thereon at the rate of two per centum per annum for ten years from said first day of July, eighteen hundred and ninety-one, and three per centum per annum for ninety years thereafter to the date of maturity, said interest to be payable semi-annually; of which aggregate debt of about twenty-eight million of dollars the said bondholders' committee represent that they now

hold and agree to surrender not less than twenty-three million of dollars; and

Whereas said report and agreement contemplate the surrender of the obligations held by the bondholders' committee as an entirety, and do not contemplate an apportionment by the general assembly between the various classes of creditors so represented by said bondholders' committee, the same having been committed to a distributing tribunal, as hereinbefore recited; and

Whereas it is the desire and intention of the general assembly that a settlement of all the other outstanding obligations of the state (except those issued under the act of February fourteenth, eighteen hundred and eighty-two, the evidences of debt held by the public institutions of the state in pursuance of law and by the United States) as well as those controlled by the bondholders' committee, as aforesaid, shall be made under the provisions of this act; therefore,

1. Be it enacted by the general assembly of Virginia, That
48 the commissioners of the sinking fund, a majority of whom may act, be, and they are hereby, empowered and directed to create "listable" engraved bonds, registered and coupon, to such an extent as may be necessary to issue nineteen million of dollars of bonds in lieu of the twenty-eight million dollars of outstanding obligations, not funded under the act approved February fourteenth, eighteen hundred and eighty-two, hereinbefore recited.

2. The said bonds shall be dated July first, eighteen hundred and ninety-one, and be payable at the office of the treasurer of the state, or at such agency in the city of New York, as may be designated by the state, on the first day of July, nineteen hundred and ninety-one, and shall bear interest from date, payable semi-annually on the first days of January and July in each year, at the rate of two per centum per annum for the first ten years and three per centum per annum for the remaining ninety years; the said interest may be payable in Richmond, New York and London, or at either place, as may be designated by the state; provided that the state may at any time, and from time to time, after July first, nineteen hundred and six, redeem at par any part of the principal with accrued interest. In case of such redemption before maturity, the bonds to be paid shall be determined by lot by said commissioners of the sinking fund, and notice of the bonds so selected to be paid shall be given by publication beginning at least ninety days prior to an interest-due date, in a newspaper published in Richmond, Virginia, one in New York city, and one in London, England; and the interest from and after the next succeeding interest-due date shall cease upon the bonds so designated to be paid: provided that no registered bonds shall be so redeemed while there are any coupon bonds outstanding.

3. The form of the bonds shall be substantially as follows, to-wit:

Issued under act of assembly, approved — day of ——, eighteen hundred and ninety-two.

The commonwealth of Virginia acknowledges herself to be
49 indebted to —— —— (in case of a coupon bond to the bearer, an in case of a registered bond inserting the name of a person

or corporation, or assigns), in the sum of —— dollars, which she promises to pay in lawful money of the United States, at the office of the treasurer of the state, or at such agency in the city of New York as may be designated by the state, on the first day of July, nineteen hundred and ninety-one, with the option of payment at par with accrued interest, before maturity at any time after July first, nineteen hundred and six, and interest, at the office of the treasurer of the state, or at the agencies of the state in New York city and London, England, or at either place, as may from time to time be designated by the state, in such lawful money aforesaid, at the rate of two per centum per annum for ten years from the first day of July, eighteen hundred and ninety-one, and at the rate of three per centum per annum thereafter until paid, payable semi-annually on January first and July first in each year (according to the tenor of the annexed coupon bearing the engraved signature of the treasurer of the commonwealth in case of coupon bonds.) And this obligation is hereby made exempt from any taxation by the said commonwealth of Virginia, or any county or municipal corporation thereof.

In testimony whereof, witness the signature of the treasurer and the countersignature of the second auditor of the commonwealth of Virginia, hereto affixed according to law.

[SEAL.]

—— ——, *Treasurer.*

—— ——, *Second Auditor.*

4. The form of coupon for coupon bonds shall be substantially as follows, to-wit:

Coupon No. —.

On the first day of —— the commonwealth of Virginia will pay to bearer —— dollars in lawful money of the United States, at the office of the treasurer of the state, or at the agencies of the state in New York city or London, England, or at either place, as may be designated by the state; the same being six months' interest on bond number —. —— dollars.

—— ——, *Treasurer.*

Each coupon to be impressed on the back with its number, in order of maturity, from number one consecutively.

5. Said commissioners of the sinking fund are authorized to issue coupon bonds in denominations of five hundred and one thousand dollars each, as may be necessary to carry out the provisions of this act: provided that registered bonds may be issued of the denominations of one hundred dollars, five hundred dollars, one thousand dollars, five thousand dollars, ten thousand dollars; and they are authorized and directed to issue said bonds, registered or coupon, in exchange for the said outstanding obligations up to and including July first, eighteen hundred and ninety-one (exclusive of evidences of debt held by public institutions of the commonwealth as aforesaid and by the United States) as follows:

A. Said bondholders' committee may at any time on or before the thirtieth day of June, eighteen hundred and ninety-two, present to said commissioners for verification bonds and other evidences of debt, and coupons or other evidences of interest thereon, obligations of the state of Virginia, held by said committee, for exchange as aforesaid; and said commissioners shall determine whether the obligations so presented are genuine obligations of the state and whether the coupons or other evidences of interest represent interest accrued on such obligations (exclusive of evidences of debt held by public institutions of the commonwealth as aforesaid and by the United States).

B. Such of the obligations so presented for verification as may be determined by said commissioners to conform to the requirements of paragraph A hereof, shall be sealed in convenient packages as the examination proceeds. Each of the packages shall be num-
51 bered, and upon each package shall be endorsed the amount and character of the obligations therein contained. Such endorsement on each package shall be signed by said commissioners or a majority thereof, and the package shall then be delivered to said committee or its agent. Said commissioners shall keep in a book to be provided for the purpose a record of the numbers of all such packages and of the amount and character of the obligations contained in each. Such obligations presented by said bondholders' committee as do not conform to the requirements of paragraph A hereof shall be returned to said committee; but said commissioners shall keep a record thereof in the book aforesaid.

C. After said bondholders' committee shall have presented to said commissioners for verification bonds and other evidences of debt and coupons, or other evidence of interest thereon accrued on or before July first, eighteen hundred and ninety-one, obligations of the state of Virginia, all conforming to the requirements of paragraph A hereof, as determined by said commissioners, and amounting in the aggregate to not less than twenty-three million of dollars, after deducting one-third of the principal and interest of such obligations as were issued prior to the thirtieth day of March, eighteen hundred and seventy-one, and also deducting one-third of the principal and interest of such obligations as were issued under the act approved the thirtieth day of March, eighteen hundred and seventy-one, as do include West Virginia's proportion, said bondholders' committee may at any time on or prior to the thirtieth day of June, eighteen hundred and ninety-two, present the same in bulk to said commissioners for surrender and exchange as herein provided. All coupons matured or to mature on coupon bonds after July first, eighteen hundred and ninety-one, or coupons of like class and amount, or the face value thereof in cash, shall be surrendered with such bonds, the said cash to be returned if proper coupons are subsequently tendered. And when the paid bondholders' committee shall have presented for exchange the obligations aforesaid to an amount of twenty-
52 three million of dollars or more, if the engraved bonds hereinbefore authorized are not ready for exchange, the said commissioners shall, upon application of said bondholders' committee,

issue to said bondholders' committee a manuscript registered bond of the state of Virginia, substantially of the form of the bond hereinbefore specified, for the aggregate amount to which the said committee may be entitled for the obligations so presented under this act, the said bond to be exchangeable for the engraved bonds aforesaid of character and amount required by said committee, as prescribed in this act, and interest in the meantime on said manuscript bond shall be paid as herein provided for on the engraved bonds.

D. The said new bonds shall be issued to said bondholders' committee by the said commissioners in the following proportion, to-wit: nineteen thousand dollars of the new bonds to be created under this act shall be issued for every twenty-eight thousand of old outstanding obligations (principal and interest to July first, eighteen hundred and ninety-one), as aforesaid, surrendered by said bondholders' committee to the said commissioners, after the deductions provided for in paragraph C of this section; and a proportionate amount of said new bonds shall be issued for smaller sums of said outstanding obligations so surrendered: provided that no certificates issued on account of the proportion of West Virginia of the obligations of the state shall be funded under this act. When said bondholders' committee shall have surrendered and exchanged such obligations as aforesaid to the amount of at least twenty-three million dollars, said committee may at any time thereafter up to and including the thirtieth day of June, eighteen hundred and ninety-two, present to said commissioners for verification, surrender, and exchange additional obligations, principal and interest, as aforesaid; all coupons matured or to mature on coupon bonds after July first, eighteen hundred and ninety-one, or coupons of like class and amount, or the face value thereof
53 in cash, to be presented with such bonds, the cash, if paid, to be returned if proper coupons are subsequently tendered. After said commissioners shall have determined that said obligations conform to the requirements of paragraph A hereof, said commissioners shall accept the obligations so presented for surrender and exchange by said committee, and shall deliver to said committee in exchange therefor new bonds issued under the provisions of this act in the same proportion as is set out in this paragraph of this section, after making the deductions provided for in paragraph C of this section.

E. If on making the exchange provided for in this act said committee shall be found entitled to a fractional amount or amounts less than one hundred dollars in addition to the new bonds delivered to it, said commissioners of the sinking fund shall issue to the committee a certificate or certificates for such amount or amounts. Such fractional certificates shall be exchangeable for the bonds authorized by this act to be issued in sums of one hundred dollars, or any multiple thereof, and certificates of like character shall be issued for any fractional amount which may remain in making the exchange.

6. For all balances of the indebtedness, constituting West Virginia's share of the old debt, principal and interest, in the settlement of Virginia's equitable share of the bonds authorized to be exchanged under this act, the said share having been heretofore determined by

the commonwealth of Virginia, the said commissioners shall issue certificates substantially in the following form, viz:

No. —. The commonwealth of Virginia has this day discharged her equitable share of the (registered or coupon, as the case may be), bond for —— dollars, dated — day of ——, and No. —, leaving a balance of —— dollars, with interest from ——, to be accounted for to the holder of this certificate by the state of West Virginia, without recourse upon this commonwealth.

Done at the capitol of the state of Virginia, this — day
54 of ——, eighteen hundred and ninety-two.

—— ——, *Second Auditor.*
—— ——, *Treasurer.*

The certificates so issued under sections five and six of this act shall be recorded by the second auditor in a book kept for that purpose, giving the date and number of the transaction to which it refers, the amount of certificates, and the name of the person or corporation to whom issued and delivered; and as such certificates, authorized by paragraph E, section five of this act, are exchanged, the same shall be cancelled and preserved as herein provided in respect to the evidences of debt refunded.

7. The commissioners of the sinking fund are hereby authorized and required to receive on deposit for verification, classification and exchange such of the said obligations of the state as may be presented to said commissioners; provided, that said commissioners shall not receive on deposit for the purposes aforesaid any outstanding obligations of the state which have been once deposited with the bondholders' committee, or may be hereafter deposited with them; the said verification and exchange for the new bonds of the obligations so deposited to be conducted in the same manner as hereinbefore provided with respect to the obligations deposited with the said bondholders' committee, and the said commissioners of the sinking fund shall issue to and distribute amongst said depositing creditors after they have fully complied with the terms of this act, in exchange for the obligations so deposited, bonds authorized by this act as follows, namely: to each of the several classes of said depositing creditors the same proportion, as nearly as may be found in their judgment practicable by the commissioners of the sinking fund, as the same class shall receive under the distribution which shall be made by the commission for the creditors represented by the bondholders' committee: provided that no obligations shall be received for such deposit after the thirtieth day of June, eighteen hundred and ninety-
55 two, nor shall any coupon bonds be received which do not have attached thereto all the coupons maturing after July first, eighteen hundred and ninety-one; but for any such coupons as may be missing, coupons of like class and amount, or the face value thereof in cash, may be received; the said cash, if paid, to be returned if proper coupons are subsequently tendered; and each depositor shall, when he receives his distributive share of the said new issue of bonds, pay to the commissioners of the sinking fund three and one-half per centum in cash of the par value of the bonds received by

him, or a commission equal in amount to that which may at any time hereafter be fixed by the said committee of bondholders upon any bonds deposited with them, not, however, in any case to exceed three and one-half per centum; and said sinking fund commissioners shall cover the fund thus received into the treasury of the commonwealth.

8. All the coupon and registered bonds issued under this act shall be separately recorded by the second auditor in books provided for the specific purpose, in each case giving the date, number, amount of obligations issued, and the name of the person or corporation to whom issued, and the date, number, amount and description of the obligations surrendered.

9. All the bonds and certificates of debt, and evidences of past due and unpaid interest, taken in under the provisions of this act, shall be cancelled by the treasurer in the presence of the commissioners of the sinking fund, or a majority thereof, as the same are acquired, and by him carefully preserved, subject to disposition by the general assembly; a schedule of the bonds, certificates, and other evidences of debt so cancelled shall be certified by said commissioners and filed by the treasurer for preservation.

10. In the year nineteen hundred and ten, and annually thereafter, there shall be set apart of the revenue collected from the property of the state each year up to and including the year nine-
56 teen hundred and twenty-nine, one-half of one per cent. upon the bonds issued under this act, as well as upon the outstanding bonds issued under act approved February fourteenth, eighteen hundred and eighty-two; and in the year nineteen hundred and thirty, and annually thereafter until all the bonds issued under this act and the said act approved February fourteenth, eighteen hundred and eighty-two, are paid, there shall be set apart of the revenue collected from the property of the state each year one per cent. upon the outstanding bonds issued under the aforesaid acts, which shall be paid into the treasury to the credit of the sinking fund, and the commissioners of the sinking fund shall annually, or oftener, apply the same to the redemption or purchase (at a rate not above par and accrued interest) of the bonds issued under the aforesaid acts, and the bonds so redeemed shall be cancelled by the said commissioners and the same registered by the second auditor in a book to be kept for that purpose, giving the number and date of issue, the character, the amount, and the owner at the time of purchase, of the bonds so redeemed and cancelled; and in case no such purchase of bonds can be made, then the amount which can be redeemed shall be called in by lot, as provided in section two of this act. All bonds of the state issued under the provisions of the act aforesaid, approved February fourteenth, eighteen hundred and eighty-two, and now held by said commissioners of the sinking fund, shall, as soon as at least fifteen million of dollars of new bonds shall have been issued and delivered pursuant to the provisions of this act, be cancelled by said commissioners and preserved in the office of the treasurer of the commonwealth.

11. Executors, administrators and others acting as fiduciaries may participate in the settlement of the debt herein specified in the man-

ner hereinbefore provided, and such action shall be deemed a lawful investment of their trust fund. Executors; administrators and others acting as fiduciaries may invest in the bonds issued under this act, and the same shall be considered a lawful investment.

57 12. All coupons heretofore tendered for taxes and held by said tax-payers in pursuance of such tender, shall be received in payment of the taxes for which they were tendered, and upon their delivery to the proper collector or the amount thereof in money, the judgments obtained against the said tax-payers for such taxes shall be marked satisfied: Provided the said tax payers shall have paid in money and not in coupons the costs of said judgments. All coupons heretofore tendered for taxes and held by the officers of the commonwealth for verification, in pursuance of the statute in such case made and provided, shall be received in payment of the taxes for which they were tendered, and the money collected for such taxes returned to the parties from whom it was received: Provided the said tax-payers shall have paid in money, and not in coupons, all costs incurred in legal proceedings to verify said coupons.

13. The treasurer of the commonwealth is authorized and directed to pay the interest on the bonds issued under this act as the same shall become due and payable out of any money in the treasury not otherwise appropriated.

14. The plates from which the bonds and fractional certificates authorized by this act are printed shall be the property of the commonwealth.

15. All necessary expenses incurred in the execution of this act shall be paid out of any money in the treasury not otherwise appropriated on the warrants of the auditor of public accounts, drawn upon the treasury on the order of the commissioners of the sinking fund.

16. The act entitled "an act to ascertain and declare Virginia's equitable share of the debt created before and actually existing at the time of the partition of her territory and resources, and to provide for the issuance of bonds covering the same, and the regular and prompt payment of interest thereon," approved February fourteenth, eighteen hundred and eighty-two, and the amendments

58 thereto, to-wit: an act entitled "an act to declare the true intent and meaning of, and to amend and re-enact section five of chapter eighty-four of acts eighteen hundred and eighty-one and eighteen hundred eighty-two, approved February fourteenth, eighteen hundred and eighty-two," approved August twenty-seventh, eighteen hundred and eighty-four; and the act entitled "an act to amend and re-enact an act approved August twenty-seventh, eighteen hundred and eighty-four, entitled an act to declare the true intent and meaning of, and to amend and re-enact section five of chapter eighty-four of acts of eighteen hundred and eighty-one and eighteen hundred and eighty-two, approved February fourteenth, eighteen hundred and eighty-two," approved November twenty-ninth, eighteen hundred and eighty-four, are hereby repealed.

17. The commissioners of the sinking fund are authorized, if it shall seem to them for the best interest of the commonwealth, to make one extension of the time for the funding of the said twenty-

eight million of dollars of outstanding evidences of debt for a period not exceeding six months from the thirtieth day of June, eighteen hundred and ninety-two.

18. The commissioners of the sinking fund are authorized to exchange coupon bonds issued under this act into registered bonds in the denominations hereinbefore provided, and to arrange for the transfer of registered bonds. For every bond so issued in exchange a fee of fifty cents shall be charged by, and paid to the second auditor, and shall, upon his order, be covered into the treasury to the credit of the sinking fund; and bonds so taken in exchange shall be cancelled in the manner hereinbefore prescribed.

19. This act shall be in force from its passage.

59 EXHIBIT NUMBER 5.

CHAP. 747. A joint resolution to provide for adjusting with the State of West Virginia the proportion of the public debt of the original State of Virginia proper to be borne by West Virginia, for the application of whatever may be received from West Virginia to the payment of those found to be entitled to the same.

Approved March 6, 1894.

(Acts G. A. of Va., 1893-4, p. 867.)

Whereas the general assembly of Virginia is required by the constitution of Virginia to provide by law for adjusting with the state of West Virginia the proportion of the public debt of the original state of Virginia proper to be borne by West Virginia; and

Whereas the general assembly has heretofore passed four several acts in relation to the funding and settlement of her public debt, as follows, to wit:

First. An act entitled an act to provide for the funding and payment of the public debt, approved March thirtieth, eighteen hundred and seventy-one.

Second. An act entitled an act to provide a plan of settlement of the public debt, approved March twenty-eighth, eighteen hundred and seventy-nine.

Third. An act entitled an act to ascertain and declare Virginia's equitable share of the debt created before and actually existing at the time of the partition of her territory and resources, and to provide for the issuance of bonds covering the same and the regular and prompt payment of interest thereon, approved February fourteenth, eighteen hundred and eighty-two; and

Fourth. An act entitled an act to provide for the settlement of the public debt of Virginia not funded under the provisions of an act entitled an act to ascertain and declare Virginia's equitable share of the debt created before and actually existing at the time of the partition of her territory and resources, and to provide for the issuance

of bonds covering the same and the regular and prompt pay-
60 ment of the interest thereon, approved February fourteenth, eighteen hundred and eighty-two, approved February twentieth, eighteen hundred and ninety-two; and

Whereas in each of said acts provision is made for issuing to creditors of the original state of Virginia who should accept the new bonds provided for by said several acts, certificates for such proportion of the obligation surrendered by them as was deemed proper to be borne by the state of West Virginia, to-wit; one third of the amount of said obligations, of which certificates this state holds a large amount, through the agency of the commissioners of its sinking fund and literary fund; and

Whereas the present state of Virginia has settled and adjusted, to the entire satisfaction of her people and the creditors, the liability assumed by her on account of two-thirds of the debt of the original state: now, therefore,

Be it resolved by the senate of Virginia (the house of delegates concurring), That a commission of seven members is hereby created and provided for, of whom the present chairman of the committee on finance and banks of the senate shall be one, and the present chairman of the committee on finance of the house of delegates shall be another; of the other five, two shall be chosen by the senate from among the persons now members of that body; two by the house of delegates from among the persons now members of that body, and one, to be a resident of this state, shall be appointed by the governor. No member of said commission shall cease to be a member thereof by reason of ceasing to be a member of the general assembly.

Said commission shall choose its own chairman and secretary; vacancies therein occurring or existing during recess of the legislature shall be filled by the governor on notification thereof by the chairman; and a majority of said commission shall be competent to act.

Said commission is hereby authorized and directed to negotiate with the state of West Virginia a settlement and adjustment of the
61 proportion of the public debt of the original state of Virginia proper to be borne by West Virginia.

But said commission shall not proceed with said negotiation until assurances satisfactory to the commission shall have been received from the holders of a majority in amount of said certificates, exclusive of those held by the state through the agency of the board of education and sinking fund commissioners, that they desire the said commission to enter into and undertake such negotiation, and will accept the amount so ascertained to be paid by the state of West Virginia in full settlement of the one-third of the debt of the original state of Virginia which has not been assumed by the present state of Virginia. But said commission shall in no event enter into any negotiation hereunder except upon the basis that Virginia is bound only for the two-thirds of the debt of the original state which she has already provided for as her equitable proportion thereof.

All expenses incurred by said commission and said board of arbitrators, including reasonable compensation of the members thereof,

shall be paid out of the proceeds of such settlement, or by the holders of said certificates who are the beneficiaries of such settlement, but without subjecting the state to any expense on this account.

And their action shall be subject to the approval or disapproval of the general assembly, and shall not be binding on the state until approved by the general assembly. The governor is requested to communicate this joint resolution to the governor and legislature of West Virginia.

This joint resolution shall be in force from its passage.

62 EXHIBIT NUMBER 6.

CHAP. 825. An act to provide for the settlement with West Virginia of the proportion of the public debt of the original State of Virginia proper to be borne by West Virginia, and for the due protection of the Commonwealth of Virginia in the premises.

Approved March 6, 1900.

(Acts G. A. of Va., 1899-1900, p. 902.)

Whereas the general assembly of Virginia has heretofore passed certain acts with respect to the settlement of her public debt as follows, to wit:

First. An act entitled an act to provide for the funding and payment of the public debt, approved March thirtieth, eighteen hundred and seventy-one.

Second. An act entitled an act to provide a plan of settlement of the public debt, approved March twenty-eighth, eighteen hundred and seventy-nine.

Third. An act entitled an act to ascertain and declare Virginia's equitable share of the debt created before and actually existing at the time of the partition of her territory and resources, and to provide for the issuance of bonds covering the same and the regular and prompt payment of interest thereon, approved February fourteenth, eighteen hundred and eighty-two; and

Fourth. An act entitled an act to provide for the settlement of the public debt of Virginia not funded under the provisions of an act entitled an act to ascertain and declare Virginia's equitable share of the debt created before and actually existing at the time of the partition of her territory and resources, and to provide for the issuance of bonds covering the same and the regular and prompt payment of the interest thereon, approved February fourteenth, eighteen hundred and eighty-two, approved February twentieth, eighteen hundred and ninety-two; and

Whereas in each of said acts provision is made for issuing to creditors of the original state of Virginia who should accept
63 the new bonds provided for by said several acts, certificates for such proportion of the obligation surrendered by them as was deemed proper to be borne by the state of West Virginia, to wit:

one-third of the amount of said obligations, of which certificate this state holds a large amount, through the agency of the commissioners of its sinking fund and literary fund, and

Whereas the general assembly is required by the constitution of Virginia to provide by law for adjusting with the state of West Virginia the proportion of the debt of the original state of Virginia proper to be borne by West Virginia, but no such adjustment has ever been had, and

Whereas it appears that while Virginia has satisfactorily settled the two-thirds of the original debt which she assumed, yet it is possible that complications will arise with respect to said certificates which will render it desirable that she should endeavor to secure an adjustment thereof upon terms which will protect herself, but will work no injustice to West Virginia, and thus finally dispose of the only question remaining unsettled in connection with said debt; now, therefore,

1. Be it enacted by the general assembly of Virginia, That the commission created and appointed under a joint resolution of this general assembly entitled a joint resolution to provide for adjusting with the state of West Virginia the proportion of the public debt of the original state of Virginia proper to be borne by West Virginia, for the application of whatever may be received from West Virginia to the payment of those found to be entitled to the same, approved March sixth, eighteen hundred and ninety-four, be, and said commission hereby is, authorized to receive and take upon deposit the certificates aforesaid or have the same otherwise placed or held on deposit subject to their control upon an agreement and contract on the part of the holders of said certificates that if the said commission will secure a settlement with West Virginia with respect to said certificates the said holders of said certificates so deposited will accept the amount realized on such settlement from West Virginia
64 on said certificate as a full settlement of all their claims thereunder.

2. If at least two-thirds in amount of the said certificates issued under the act of eighteen hundred and seventy-one, exclusive of those held by the state through the agency of the board of education and the sinking fund commissioners, and at least a majority in amount of all the other certificates aforesaid shall be so deposited or placed subject to the control of the said commission upon the agreement and contract aforesaid, then the said commission shall be authorized and empowered by and with the advice and approval of the attorney-general of Virginia to take such action and institute such proceedings on behalf of the state as may in the judgment of said commission and attorney-general be needful and proper to protect the interest of the state and bring about and carry into effect a settlement as aforesaid. All the expenses involved in connection with any of the matters aforesaid shall be borne by the certificate holders, as provided in the joint resolution aforesaid, and the state shall not be subjected to any expense on that account.

3. This act shall be in force from its passage.

65 EXHIBIT NUMBER 7.

Showing Amounts Paid Off Since January 1, 1861, or Assumed and Now Carried by Virginia on Account of the Old Debt of the Undivided State.

* * * * * * *

Amount of interest paid, as shown by the records of the Second Auditor's Office, from January 1st, 1861, to February 1st, 1906.....	$35,551,642.82
Bonds heretofore paid off, taken up, and retired by Virginia to Sept. 30, 1905. See 2nd Auditor's Report for 1905, P. 21 and now held by Virginia	10,771,791.49 (*)
New Bonds of Virginia issued for the portion of the unpaid debt funded and assumed by her — See Second Auditor's Report for 1905, p. 9....	25,537,820.00
	$71,861,253.31

(*) NOTE.—This sum of $10,771,791.49 probably does not include some considerable amounts of ante bellum bonds of Virginia paid her by some of the Railroad Companies of the State, and by the Dismal Swamp Canal Company in payment for the share and interest of the State in such Companies or for property sold them by the State: nor does it include considerable amounts of said bonds received by the State from the sureties of certain Sheriffs—Nor does the Statement include amounts paid by Virginia since 1861 in settlement of open accounts or unfounded ante bellum debts of the undivided State. These amounts can be ascertained from the records of the Board of Public Works, the First and Second Auditor's offices and the Acts of Assembly.

66 Report of the Commission appointed and acting under the joint resolution of the General Assembly of Virginia, approved March 6th, 1894, and the act of the said General Assembly, approved March 6th, 1900, with respect to certain certificates issued by the State in connection with the debt of the original State of Virginia and known as Virginia Deferred Certificates.

RICHMOND, VA., *January 9th*, 1906.

To the General Assembly of Virginia:

Your Commission appointed and acting under the joint resolution of the General Assembly entitled "A joint resolution to provide for adjusting with the State of West Virginia the proportion of the debt or the original State of Virginia proper to be borne by West Virginia for the application of whatever may be received from West Virginia to the payment of those found entitled to the same," approved March March 6th, 1894, and an Act of the General Assembly entitled "An

Act to provide for the settlement with West Virginia of the proportion of the public debt of the original State of Virginia proper to be borne by West Virginia, and for the due protection of the Commonwealth of Virginia in the premises," approved March 6th, 1900, beg leave to make a further report of their proceedings, as follows:

It will be noted that it appears from the first report of your Commission, dated January 28th, 1896, and printed as Senate Document No. 10 in the Senate Journal and Documents of 1896, and as House Document No. 4 in the House Journal and Documents of that session, that the conditions required by said joint resolution having been complied with, your Commission was ready and desirous to open negotiations with West Virginia for a settlement as provided for in said joint resolution, and this fact was communicated to the Governor of West Virginia by the Governor of this State
67 with the request that such negotiations might accordingly be opened, which communication was laid before the Legislature of West Virginia, but that body, by a joint resolution, declined to enter into negotiations on the subject.

By a subsequent report of your Commission to this General Assembly, dated February 7th, 1900, and to be found printed as Senate Document No. 6 in Senate Journal and Documents for the session of 1899–90, it was further shown that the control and disposal of a majority of said certificates had been again tendered your Commission by a Committee, of which John Crosby Brown of New York was chairman, acting under a depositing agreement of July 28th, 1898, and the said Committee offering to accept whatever might be realized from West Virginia on the certificates in full settlement of their claims. A copy of said depositing agreement of July 28th, 1898, under which said Committee was constituted, was filed with said last report, and the same is also now herewith filed, showing who constituted said Depositing Committee and what their powers and functions were, and also that Brown Brothers & Company, Bankers of New York, N. Y., were the depository of the said Committee in whose hands the said certificates had been placed.

Upon the coming in of this last report, the Act of March 6th, 1900, was passed by the General Assembly, by which the powers and duties of your Commission were very materially enlarged, and it was provided that if at least two thirds of the certificates of 1871 outstanding in the hands of the public, and a majority of all the other certificates so outstanding, were deposited and placed subject to the control of your Commission upon the agreement that the creditors would accept whatever might be realized thereon from West Virginia in full settlement of their claims, then your commission was authorized, by and with the advice and approval of the Attorney General of the State, to take such action and institute such
68 proceedings on behalf of the State as might, in the judgment of your Commission and the Attorney General, be needful and proper to protect the interests of the State and bring about and carry into effect a settlement in the premises, but all the expenses in connection with any of the matters involved were to be borne by the

certificate holders. A copy of this Act is for convenience of reference herewith filed.

At the time of the passage of this Act the Depositing Committee did not hold the two-thirds in amount of the certificates of 1871, required by the Act as a basis for negotiations or action by your Commission, but having acquired them later, the Committee, on the 18th of September, 1902, submitted to your Commission a proposition in writing, bearing date on that day, by which they tendered and placed subject to the control of your Commission, in accordance with the terms of said Act, $8,565,095.70 of the certificates of 1871, being more than the requisite two-thirds of these certificates outstanding, and $1,782,475.13 of the other certificates outstanding, being a majority thereof, upon the agreement and arrangement on the part of your Commission acting for the State of Virginia that they would enter into negotiations with the State of West Virginia, or the constituted authorities thereof, for the purpose of effecting a settlement with that State with respect to said certificates, and that your commission would, by and with the advice and approval of the Attorney General, take such action as they might deem needful in the premises, any amount realized on such settlement to be accepted in full of all claims on said certificates as in said Act provided.

This proposition was accompanied by the statement of Brown Bros. & Co., the depository, showing that the certificates referred to were held by them, and it was stated in the proposition that upon its acceptance by your Commission it should constitute a contract between the parties to continue in force for three years, but
69 subject to renewal or extension by the parties, and to such amendment or modification as might be agreed on. It was on the day of its date accepted in writing by the unanimous action of your Commission, and the acceptance thereof duly endorsed thereon, and the same was approved by the Attorney General on September 29th, 1902; and a copy of the same showing its acceptance and the endorsements thereon is herewith filed and is referred to as showing in detail the action taken by your Commission. This agreement constitutes an arrangement with Virginia under said Act of March 6th, 1900, for obtaining a settlement with West Virginia and thus precluded the right which any certificate holder might, under the terms of the depositing agreement, otherwise have had to withdraw his certificate after October 1st, 1902.

On December 3rd, 1902, a plan of settlement as provided in the said depositing agreement of July 28th, 1898, was formulated, approved and recommended by the Depositing Committee and Advisory Board created under said agreement, by which the provisions of the foregoing contract of September 18th, 1902, were adopted as included in their plan of settlement, with the right to the Depositing Committee to make such further contracts with the Virginia Commission as might be deemed needful to bring about a settlement with West Virginia under said joint resolution and Act of the Virginia Assembly.

This plan of settlement provided for a full compliance on the part of the Depositing Committee with the terms of said joint resolution

and Act, and clothed the Committee with ample powers to act in the premises, and notice of it was duly published in New York and London, as required in the agreement of July 28th, 1898, so as to afford opportunity to any dissenting depositor of certificates to give notice of his unwillingness to accept the proposed settlement,
70 which notice the agreement provided was to be given within thirty days from the completion of the publication, but no such notice appears to have been given at any time by any depositor. The depositing agreement also provided that in the absence of such notification from a majority of the depositors, the proposed plan should become effective and final, and that the declaration in writing of this fact by the Committee to the depository should be conclusive on this point; and such declaration in writing by the depositing Committee to Messrs. Brown Bros. & Co., the depository, was accordingly so made in writing on December 13th, 1904. A copy of this plan of settlement and the certificates of the publication thereof, together with the said declaration in writing of the Committee, are all herewith filed and are referred to as parts hereof.

On December 14th, 1904, the amount of said certificates deposited with Brown Brothers and Company, as aforesaid, had increased to $11,607,298.64 of which $9,360,062.96 were those of 1871, and your Commission proposing to again attempt to open negotiations for a settlement with the legislature of West Virginia (which was then about to convene) it was thought advisable to enter into a contract by way of amendment to that of September 18th, 1902, by which the complete control of all these certificates should be placed in the hands of your Commission, and such additional agreement, bearing date December 14th, 1904, was accordingly entered into between the said Depositing Committee and your Commission, and approved by the Attorney General; and cotemporaneously therewith by a receipt or certificate bearing date on the same day, the said Brown Brothers and Company acknowledged and certified that they held all the certificates last aforesaid to the amount of $11,607,298.64 on deposit for and subject to the control and disposition of your Commission without reservation or condition of any kind. A copy of this agreement and receipt of December
71 14th, 1904, together with the Attorney General's approval, will be found filed herewith. By a subsequent communication of January 23rd, 1905, from Brown Bros. & Company to your Commission, it was shown that said deposits, so placed under the control of your Commission, had increased to $12,910,555.89, of which $10,639,776.42 were those of 1871, and a copy of this communication will also be found herewith filed.

Desiring, as above stated, to open communication with West Virginia, your Commission, on December 14th, 1904, appointed a sub-committee consisting of Messrs. Randolph Harrison, Chairman, H. D. Flood, H. H. Downing and John B. Moon, who, together with the Attorney General, should be authorized to open negotiations with the proper authorities of West Virginia looking to a settlement of the matters at issue. This sub-committee endeavored to do this by the presentation of a memorial to His Excellency, A. B. White,

Governor of the State of West Virginia, signed by the sub-committee and approved by the Attorney General, bearing date January 25th, 1905, a copy of which is herewith filed. This memorial was presented to the Governor of West Virginia at Charleston, W. Va., by the Attorney General and the Chairman of the sub-committee, and was by him, on the 27th day of January, 1905, transmitted to the Senate of West Virginia by a special message to that body, but without any recommendation on his part, a copy of which message is also herewith filed.

It was arranged, however, by the Senate and House Committees on Finance of the West Virginia Legislature to give to the sub-committee a hearing upon the subject at Charleston on February 1st, 1905, at which hearing the Attorney General of Virginia, the Chairman of the sub-committee and the chairman of your Commission attended, and the memorial of your Commission above referred to was read, and a full presentation was made by Mr. Harrison, Chairman of the sub-committee, of the reasons why West Virginia should, at least, enter into nagotiations in regard to a settlement in an address made by him to the Senate and House Finance
72 Committees aforesaid. It was considered by your Commission that Mr. Harrison's address dealt with the questions involved in so clear and able a manner and showed so conclusively that is was both the right and duty of Virginia to ask for a settlement, that they caused it to be printed, and a copy of it is herewith filed.

The Legislature of West Virginia, however, failed and declined to enter into any negotiations or to empower any committee or other official to do so, but on the contrary passed the following resolutions: "Resolved by the Legislature of West Virginia: That it is the sense of this Legislature that the State of West Virginia does not owe any part of the so called debt of Virginia, and that this Legislature is opposed to any negotiations whatsoever on that subject." Indeed your Commission are advised that resolutions of a similar import have been passed by all, or nearly all, of the Legislatures of West Virginia which have met since your Commission first communicated with them on the subject in 1896, thus showing a persistent and determined refusal on the part of West Virginia to pay any portion of what they are bound for on account of the debt of the original State, or to enter into any accounting or negotiations whatsoever on the subject.

The deferred certificates of 1871 issued by the State of Virginia are in the following form:

"Copy of Certificate under Act of March 30, 1871.

"COMMONWEALTH OF VIRGINIA.

"No. —.

"TREASURER'S OFFICE, RICHMOND, VA.

"This is to certify that there is due unto —— —— heirs, executors, administrators or assigns $—, being one-third of bond sur-

rendered under the provisions of an Act approved March 30th, 1871, entitled, 'An Act to provide for the funding and payment of the public debt,' namely, Bond No. —, with interest, amounting
73 to $—, Payment of said one-third with interest thereon at the rate of six per cent. per annum will be provided for in accordance with such settlement as shall hereafter be had between the States of Virginia and West Virginia in regard to the public debt of the State of Virginia existing at the time of its dismemberment, and the State of Virginia holds said bonds so far as unfunded in trust for the holder hereof or his assigns.

"In testimony whereof this certificate has been signed by the Treasurer and countersigned by the Second Auditor, as provided by law.

——— ———,

"Treasurer of the Commonwealth of Virginia.

"——— ———,

"Second Auditor of Virginia."

So it would appear that if the contention of West Virginia is correct, the responsibility that attaches to the issuing of these certificates must rest with Virginia alone and West Virginia be responsible for nothing in connection with the debt of the original State.

By a recent enactment of the State of South Dakota suit was authorized against any state whose over-due bonds might be donated or deposited in her treasury, and under this law a suit was brought by the South Dakota and judgment given against North Carolina in the Supreme Court of the United States upon some past due bonds of the latter state as see the case of South Dakota *vs.* North Carolina, 192 U. S. Reports, 286,—and a like statute has lately been enacted by the State of New York authorizing similar suits. Your Commission are informed that such suits have lately been proposed against the State of Virginia under these statutes upon the certificates of 1871 and have only been restrained and prevented by the
74 prospect of some definite action on the part of Virginia.

So your commission were confronted with the alternative of either a suit by Virginia as plaintiff on these certificates with indemnity to her against liability as proposed by the Depositing Committee, or a suit against her without any such indemnity, and your Commission had no doubt as to the safe and proper course to pursue, especially as Virginia herself holds through the agency of her Sinking and Literary funds $2,578,518.68 of the certificates of 1871 and $166,943.33 of the certificates of other classes which would be entitled to their distribution share in whatever may be realized from West Virginia.

The contract of December 14th, 1904, would have expired by limitation on September 18th, 1905, but in order to allow time for the drawing of a final contract, the same was by an agreement endorsed thereon on September 9th, 1905, extended to December 1st, 1905; and on the 24th day of November, 1905, a final contract was drawn up and entered into between your Commission and the Depositing Committee. This last contract was annexed to that of Decem-

ber 14th, 1905, as an extension and enlargement thereof, it having been provided in all of said contracts that they might be extended, modified and changed by the act of the parties.

A copy of said last contract of November 24th, 1905, annexed to that of December 14th, 1904, together with the extensions aforesaid and the approval of the Attorney General thereon endorsed, are herewith filed. It will be seen from said last contract that the reasons are therein set forth which led the Commission to the conclusion that no alternative remained in the premises except a suit against West Virginia; and they accordingly by and with the advice and approval of the Attorney General undertook to bring such suit and the Depositing Committee agreed as provided in said Act
75 of March 6th, 1900, to accept the amount recovered in such suit or the adjudication therein or any amount realized by your Commission on a compromise with West Virginia in full of all claims on the certificates deposited.

This contract also further provides that all certificates thereafter deposited with Brown Brothers and Company should be included thereunder, and that your Commission should have complete control of all certificates so deposited; and a further and additional receipt or statement was accordingly given your Commission by Brown Brothers and Company bearing date January 4th, 1906, showing that since their statement and receipt of December 4th, 1904, additional certificates to the amount of $1,566,136.77 of which $1,491,231.13 were those of 1871 had been deposited with them and were subject to the control and disposal of your Commission, making total deposits to that date $13,173,435.31, of which $10,851,294.09 were those of 1871. This last statement was verified by the oath of William Gerard Vermilye, Cashier of Brown Brothers and Company, attached thereto; and on January 5th, 1906, your Commission caused all of these certificates to be removed from the custody of Brown Brothers and Company and placed on deposit for your Commission and subject to their order with the Central Trust Company of New York, N. Y., whose acknowledgment of the receipt thereof stated that the certificates were held on deposit for and subject to the order, control and disposal of your Commission, and the keys to the boxes containing said certificates were delivered to the Secretary of your Commission—Copies of this last named statement of Brown Brothers and Company, with the affidavit of the said Vermilye attached, and of the receipt and acknowledgment of the Central Trust Company are herewith returned.

Your Commission caused these certificates to be removed from Brown Brothers and Company, not from any want of confidence in them, because your Commission have every reason to believe
76 them to be entirely responsible, but because it was deemed best to place the certificates in the hands of some custodian who never had any connection with the Depositing Committee, and who would be responsible to your Commission alone in connection therewith.

To recapitulate, your Commission will say that the whole amount of the deferred certificates outstanding is $18,227,153.60, as shown in

the statement of the Second Auditor, John G. Dew, dated September 17, 1902, and herewith returned, which statement shows also the different classes of certificates.

Of the certificates of 1871, there are in all $15,281,970.47, of which $2,578,518.68, are held by the State through the Sinking and Literary funds, leaving outstanding in the hands of the public $12,703,451.79; and of this last amount there have been deposited with your Commission $10,851,294.09, as above stated.

Of the other certificates there are in all $2,845,183.13, of which the Literary Fund holds $166,943.33, leaving in the hands of the public $2,778,239.80, and of this last amount there have been deposited with your Commission $2,322,141.32 as above stated.

It thus appears that your Commission hold more than five-sixths of all the certificates of 1871 outstanding, and about six-sevenths of all the others outstanding.

It will be noted that since the first agreement of Sept. 18, 1902, was entered into the certificates deposited with Brown Brothers and Company have increased from $10,347,570.83 to $13,173,435.41, which are now in the hands of your Commission; and there is reason to believe that this amount will be still further increased upon the institution of the proposed suits.

Respectfully submitted,

JOHN B. MOON.
J. THOMPSON BROWN.
77 H. T. WICKHAM.
H. D. FLOOD.
H. H. DOWNING.
RANDOLPH HARRISON.
W. F. RHEA.

Attest: JOS. BUTTON, *Secretary.*

78 This agreement between John Crosby Brown, George Coppell, J. Kennedy Tod and Clarence Cary, herein styled "The Committee," parties of the first part, and such holders of the certificates herein mentioned as deposit hereunder, parties of the second part.

Whereas, the present State of Virginia enacted laws providing for issuing certificates for one-third of the debt of the original State, and more than $12,000,000 of such certificates recite:

"That payment will be provided for in accordance with such settlement as shall hereafter be had between the States of Virginia and West Virginia in regard to the public debt of Virginia existing at the time of its dismemberment."

And Whereas, it is believed that West Virginia's proportion of said debt, if ascertained as provided by the Ordinance under which Virginia was divided, is less than the amount of the certificates which have been issued by Virginia; and it is considered that, under such circumstances, neither State should, or will, incur any obligations respecting said debt unless its legislature has an undoubted guarantee that substantially all of the certificates will be promptly

surrendered in exchange for whatever amount West Virginia agrees to pay and the creditors of West Virginia may agree to accept.

Witnesseth:

1st. The following gentlemen shall constitute an Advisory Board in this behalf, to wit: Thomas F. Bayard, W. Pinkney Whyte, Edward J. Phelps and George G. Williams.

The function of said Board is to examine such plan of settlement as may be proposed by the Committee, representing the holders of the certificates, and submitted to them in accordance with this agreement, and to state their recommendation thereof of the contrary.

79 Said board may add to their number, and any vacancy may be filled by the remaining members.

2d. The function of the Committee is:

(*a.*) To bring about the deposit, under this agreement, as far as may be practicable, of said certificates, or of the trust receipts heretofore issued to represent them.

(*b.*) To formulate a plan of settlement, and after it has been recommended by the Advisory Board, cause the same to be published and submitted to depositing creditors for their acceptance as herein provided.

(*c.*) To act as agent of the depositing creditors in carrying out the purposes of this agreement.

(*d.*) The Committee shall appoint one or more depositories to receive said certificates or trust receipts, and issue therefor its proper receipt.

Subject to the restrictions herein, the Committee shall have power to perform any act to accomplish a settlement, and this includes power to make arrangements with either Virginia or West Virginia to insure the prompt surrender of all or any of the certificates in exchange for such amount as West Virginia may pay and her creditors agree to accept, and also includes power to execute, in behalf of the depositing creditors, any release or acquittance which will exclude any demand on Virginia beyond the amount she may receive from West Virginia; provided that no settlement shall be concluded until it has been recommended by the Advisory Board, and has also been submitted to creditors and accepted as follows, to wit:

(1.) As soon as a plan of settlement has been recommended by the Advisory Board, the Committee shall, before proposing it to the State, advertise for at least twice a week for three weeks in

80 two of the newspapers published in New York City and London, that a plan of settlement has been formulated, and notifying parties in interest where said plan may be obtained in said cities without cost.

(2.) If within thirty days after the first publication of said advertisement holders of a majority of the face value of the deposited certificates notify the Committee, in writing, either directly or through any depository, of their unwillingness to accept the proposed settlement, then said settlement shall not be consummated. If the Committee is not so notified within said thirty days, then it shall be assumed that the proposed plan, being satisfactory to a

majority, is accepted by all the depositing creditors, and it shall be offered to said States or either of them to be carried into effect by appropriate legislation.

3d. After a plan of settlement has become effective (of which fact the declaration in writing of the Committee to the several depositories shall be conclusive), each depository shall, in the manner directed by the Committee, surrender to either State, as may be necessary, any or all of the certificates deposited with it, and receive in exchange therefor the amount or kinds of securities called for by the plan of settlement.

The amount so received in settlement shall be immediately delivered to depositing creditors, in accordance with the terms of settlement.

The Committee may arrange for the purchase and sale of such fractional interests as may be necessary to equalize distribution.

4th. Each depositor shall, when he receives his new bonds in settlement, pay to the depository, for account of the Committee, such a commission as the Committee may assess for the charges
81 and expenses of settlement, including the compensation of the Committee, Counsel and Advisory Board, but such assessment shall in no event exceed five per cent. in cash on the par of any certificate deposited under this agreement.

If the Committee decide at any time that a settlement satisfactory to holders cannot be promptly effected, they may publish a notice requiring holders to pay so much of twenty cents per $100 of certificates as may be necessary to reimburse the expenses actually incurred by the Committee. Any certificate, assessment on which is not paid within six months after such notice has been published twice a week for three consecutive weeks in two of the newspapers in New York and London, may be sold by the Depository and the proceeds, after paying its assessment, held for the holder of its corresponding receipt.

Any certificate may be withdrawn from deposit at any time after October 1, 1902, upon payment of its pro rata of expenses, not to exceed twenty cents per $100 of certificates, unless a settlement has been previously arranged, or unless an arrangement has been made with Virginia for obtaining a settlement with West Virginia.

5th. The Committee may add to their number, and any vacancy may be filled by the remaining members. By unanimous consent of the members of the Committee any member may act by proxy.

In testimony whereof, the Committee have hereto set their hands this 28th. day of July, 1898.

82 An act to provide for the settlement with West Virginia of the proportion of the public debt of the original State of Virginia properly to be borne by West Virginia, and for the due protection of the Commonwealth of Virginia in the premises.

Approved March 6th, 1900.

Whereas the General Assembly of Virginia has heretofore passed certain acts with respect to the settlement of her public debt as follows—to wit:

First. An act entitled an act to provide for the funding and payment of the public debt, approved March thirtieth, eighteen hundred and seventy-one.

Second. An act entitled an act to provide a plan of settlement of the public debt, approved March twenty-eighth, eighteen hundred and seventy-nine.

Third. An act entitled an act to ascertain and declare Virginia's equitable share of the debt created before and actually existing at the time of the partition of her territory and resources, and to provide for the issuance of bonds covering the same and the regular and prompt payment of interest thereon, approved February fourteenth, eighteen hundred and eighty-two; and

Fourth. An act entitled an act to provide for the settlement of the public debt of Virginia not funded under the provisions of an act entitled an act to ascertain and declare Virginia's equitable share of the debt created before and actually existing at the time of the partition of her territory and resources, and to provide for the issuance of bonds covering the same and the regular and prompt payment of the interest thereon, approved February fourteenth, eighteen hundred and eighty-two, approved February twentieth, eighteen hundred and ninety-two; and

Whereas in each of said acts provision is made for issuing to creditors of the original State of Virginia who should accept
83 the new bonds provided for by said several acts, certificates for such proportion of the obligation- surrendered by them a- was deemed proper to be borne by the State of West Virginia—to wit: one-third of the amount of said obligations, of which certificates this State holds a large amount, through the agency of the commissioners of its sinking fund and literary fund; and

Whereas the General Assembly is required by the constitution of Virginia to provide by law for adjusting with the State of West Virginia the proportion of the debt of the original State of Virginia properly to be borne by West Virginia, but no such adjustment has ever been had; and

Whereas it appears that while Virginia has satisfactorily settled the two-thirds of the original debt which she assumed, yet it is possible that complications will arise with respect to said certificates which will render it desirable that she should endeavor to secure an adjustment thereof upon terms which will protect herself, but will work no injustice to West Virginia, and thus finally dispose of the only question remaining unsettled in connection with said debt; now, therefore,

1. Be it enacted by the General Assembly of Virginia That the commission created and appointed under a joint resolution of this General Assembly entitled a joint resolution to provide for adjusting with the State of West Virginia the proportion of the public debt of the original State of Virginia properly to be borne by West Virginia, for the application of whatever may be received from West Virginia to the payment of those found to be entitled to the same, approved March sixth, eighteen hundred and ninety-four, be, and said commission hereby, is authorized to receive and take

upon deposit the certificates aforesaid or have the same otherwise placed or held on deposit subject to their control upon an agreement and contract on the part of the holders of said certificates
84 that if the said commission will secure a settlement with West Virginia with respect to said certificates the said holders of said certificates so deposited will accept the amount realized on such settlement from West Virginia on said certificates as a full settlement of all their claims thereunder.

2. If at least two-thirds in amount of the said certificates issued under the act of eighteen hundred and seventy-one, exclusive of those held by the state through the agency of the board of education and the sinking fund commissioners, and at least a majority in amount of all the other certificates aforesaid shall be so deposited or placed subject to the control of the said commission upon the agreement and contract aforesaid, then the said commission shall be authorized and empowered by and with the advice and approval of the attorney-general of Virginia to take such action and institute such proceedings on behalf of the state as may in the judgment of said commission and attorney-general be needful and proper to protect the interests of the state and bring about and carry into effect a settlement as aforesaid. All the expenses involved in connection with any of the matters aforesaid shall be borne by the certificate holders, as provided in the joint resolution aforesaid, and the state shall not be subjected to any expense on that account.

3. This act shall be in force from its passage.

85 *Proposal.*

To the Virginia Commission as constituted under a joint resolution of the General Assembly of Virginia approved March 6, 1894, and the act of the said General Assembly approved March 6, 1900:

Whereas your Commission was constituted as set forth in said joint resolution and act of Assembly for the purpose of negotiating and bringing about a settlement with the State of West Virginia with respect to the proportion of the public debt of the original State of Virginia proper to be borne by West Virginia and in connection with which the present State of Virginia has issued certain certificates under four acts of its General Assembly, approved, respectively March 30th, 1871, March 28th, 1879, February 14th, 1882 and February 20th, 1892.

And whereas your commission was, under the said act of March 6, 1900, further authorized to receive and take upon deposit the certificates aforesaid, or to have the same otherwise placed or held on deposit subject to your control, upon the agreement and contract on the part of the holders of said certificates that if your commission would secure a settlement with West Virginia with respect to said certificates, the said holders of said certificates, so deposited, would accept the amount realized on such settlement from West Virginia as a full settlement of all their claims thereunder; and said act further provided that if at least two-thirds of the amount of the said

certificates issued under said act of 1871, (exclusive of those held by the State through the agency of the Board of Education and the sinking fund commissioners) and at least a majority in amount of all the other certificates should be so deposited or placed subject to the control of your commission upon the agreement and
86 contract aforesaid, then your commission should be authorized, by and with the approval of the Attorney-General of Virginia, to take action in the premises as might be needful to protect the interest of the State and bring about and carry into effect a settlement as aforesaid.

And whereas by a certain agreement of July 28th, 1898, a committee on behalf of the holders of the said certificates was constituted to bring about the deposit, as far as practicable, of said certificates in such depository as the committee should appoint with powers in the committee to act as agent of the certificate holders so depositing in bringing about a settlement of their claims upon such plan, as might be recommended by the Advisory Board named in said agreement and as should become effective thereunder; it being further stated in said agreement that all the said certificates so deposited would be promptly surrendered in exchange for whatever amount West Virginia might agree to pay and the creditors of West Virginia might agree to accept as aforesaid.

And whereas more than two-thirds in amount of all the said certificates of 1871, outstanding as aforesaid, to wit, $8,565,095.70 and a majority of all the other certificates aforesaid, to wit, $1,782,475.13, have been duly deposited with said committee and are in custody of Brown Brothers & Company, Bankers of New York City, N. Y., the depository named by said Committee, and are held subject to the control of the said committee under the said agreement, so that the same can be duly placed and held subject to the control of your commission in accordance with the said agreement and in pursuance of such plan of settlement as is now proposed or as may hereafter become effective.

In view of the premises the undersigned, the committee aforesaid, do now hereby tender and place subject to the control of your commission all the aforesaid certificates, so held on deposit, upon the agreement and arrangement on the part of your commission,
87 acting for the State of Virginia under the said joint resolution and act of Assembly aforesaid, that your commission will enter into negotiations with the State of West Virginia or the constituted authorities thereof for the purpose of effecting a settlement with West Virginia with respect — the said certificates in accordance with the said agreement of July 28th, 1898, and in accordance with such plan of settlement as is now proposed or as may hereafter become effective; and that your commission will by and with the advice and approval of the said Attorney-General take such action as they may deem needful in the premises; and in event such a settlement is so made, then it is hereby agreed that the amount realized thereon shall be accepted in full satisfaction of all the claims of the certificate holders thereunder and the undersigned Committee will surrender to

your commission, in exchange for such amount the certificates aforesaid so deposited.

If this proposal be accepted by your commission, the same shall constitute an arrangement and contract with the State of Virginia for obtaining a settlement with West Virginia and the same shall continue binding upon the undersigned committee and upon the holders of said certificates so deposited for the period of three years next ensuing from the date hereof for the purpose of allowing time for a settlement aforesaid; and the same shall be subject to renewal and extension for such further time as may be agreed upon and to such modification and amendment as may be agreed upon, and shall apply to and include any and all such certificates as aforesaid as may hereafter be deposited with and held by the said Committee under said agreement of July 28th, 1898.

Respectfully submitted,

JOHN CROSBY BROWN, *Chairman.*

ROBT. L. HARRISON, *Secretary.*

Richmond, Va., September 18th, 1902.

88 The undersigned, Brown Brothers & Company, Bankers, of New York City, N. Y., the depository referred to in the foregoing proposal, do hereby certify that they now hold as such depository and subject to the control of the Committee therein referred to, the certificates which are referred to in the foregoing proposal as being deposited with them, to wit:

$8,565,095.70	certificates of	1871
1,782,475.13	" "	1879
		1882
		1892

September 18th, 1902.

BROWN BROTHERS & CO.

In pursuance of a resolution of the Virginia Commission this day unanimously adopted, the foregoing proposition of the Certificate holders Committee is hereby accepted by the said Commission and becomes an agreement between the said Committee and the said Commission.

JOHN B. MOON,
Chairman of the Virginia Commission.

Attest:
JOS. BUTTON, *Secretary.*

Richmond, Va., Sept. 18th, 1902.

The above action of the Virginia Debt Commission is approved Sept. 29th, 1902.

WILLIAM A. ANDERSON,
Attorney General of Virginia.

89 *Plan for the Settlement of the West Virginia Debt.*

Under an agreement of July, 1898, a Committee was constituted for the purpose of assembling the Virginia deferred certificates, with certain powers and functions as in the agreement specified, and by the same agreement an Advisory Board was constituted whose functions were also specified in the agreement.

In pursuance of this agreement, a certain plan of settlement was, on the 21st day of June, 1899, formulated and recommended by the Committee and Advisory Board, which among other things, contained the following provision:

"The Committee may surrender to either State (Virginia or West Virginia) any of the deposited certificates and receive in full satisfaction therefor their pro rata of such an amount in State Bonds, or cash as may be agreed upon between the Committee and the representatives of Virginia or West Virginia, as the maximum amount which West Virginia will assume an account of her proportion of the debt of the original State."

Since the date last named the General Assembly of Virginia, on the 6th day of March, 1900, passed an Act authorizing a commission which had been appointed and constituted on her behalf in the premises, by and with the advice and approval of her Attorney General, to take such action and institute such proceedings as might, in the judgment of the Commission and Attorney-General, be needful and proper to bring about and carry into effect a settlement of said certificates; but it was further provided in this Act that such action should be taken only in the event that at least two-thirds of all the certificates of 1871 (exclusive of those held by the State) and a majority of all the other certificates, should be deposited with or placed subject to the control of the Commission upon an agreement on the part of the holders of such certificates that if the Commission would secure a settlement with West Virginia with respect to said certificates, they would accept the amount realized from West Virginia on such settlement in full of all their claims thereunder.

90 On the 18th of September, 1902, the Committee held on deposit $8,565,095.70 of the certificates of 1871, being more than two-thirds thereof, (*) as above stated, and $1,782,457.13 of all the other certificates, being a majority thereof; and the Committee accordingly on that day entered into a contract with the Virginia Commission, by which it was stipulated that the said certificates should, for the period of three years, be held subject to the control of the Commission upon the agreement and arrangement on the part of the Commission that they would enter into negotiations with the state of West Virginia for the purpose of effecting a settlement with respect to said certificates, and would by and with the advice and approval of said Attorney-General, take such action as they might deem needful in the premises; the amount realized on such settle-

(*) On March 2nd the figures were $9,231,602.13 of the certificates of 1871 and $2,239,451.62 of all the other certificates.

ment to be accepted in full of said certificates as above stated, which contract was duly approved by the Attorney-General of Virginia on September 29th, 1902.

In view of this Act of the Virginia Assembly, and of the recent action taken thereunder, it is deemed desirable to make the plan of settlement heretofore recommended more definite with respect to the matters now involved; and to this end the following is hereby formulated, approved and recommended by the Committee and the Advisory Board by way of supplement and addition to the original plan:

I. The above named Committee shall pledge or deposit the certifiates now or hereafter received under the agreement of July 28, 1898, with the Virginia Commission, in conformity with the Act of March 6, 1900, for the purpose of taking such action and instituting such proceedings, by and with the advice and approval of the Attorney-General of Virginia as may be deemed needful to bring about and carry into effect a settlement as in said Act provided; such pledge or deposit to be for such length of time as may be agreed on; and the said agreement of September 18, 1902 shall continue in force for the period therein specified; and the Committee may enter into such further agreements with the said Commission as may be deemed needful to bring about a settlement in the premises.

II. In the event that no settlement shall be effected by the
91 Virginia Commission either under the agreement of September 18, 1902, within the period therein specified, or under any other agreement which may be entered into between the Committee and the said Commission within such time as may be limited therein, the Committee may, after any and all such agreements with the said Commission shall have expired, take such other and further proceedings and make such other and further agreements and settlement in the premises as the Committee may deem judicious.

III. The Committee shall be authorized to make such disposition by pledge, sale or otherwise, of the certificates, now or hereafter deposited, under the agreement of July 28, 1898, as may be necessary to carry into effect any proceedings taken and any agreements or settlements made by them as above stated, with or through the said Commission or otherwise, or for the payment of expenses now or hereafter to be incurred, whether a settlement is effected or not, not to exceed, however, the limit fixed by said agreement, and may give such release and acquittance as may be necessary to that end.

IV. The amount realized on or the proceeds of any such settlement, after deducting proper charges under the agreement of July 28, 1898, shall be apportioned and distributed among the different certificate holders in such manner and according to such percentages as may be ascertained and established for the different classes of certificates by a tribunal to be constituted as follows *as follows:* one member thereof to be appointed by the Committee, one member by the Advisory Board, and the third by the two so appointed; and if it be impracticable in the judgment of such tribunal to distribute in kind any bonds or securities which may be received in any such settlement, then the same may be sold and converted into money for

the purposes of such distribution. If a vacancy occur in such tribunal the same shall be filled by the remaining members.

New York, December 3d, 1902.

G. G. WILLIAMS,
WM. PINKNEY WHYTE,
WAYNE MacVEAGH,
LYMAN J. GAGE,
Advisory Board.

JOHN CROSBY BROWN,
Chairman Committee.

92 The following are the affidavits showing publication in two newspapers in London and New York on the notice given under Article 2 of the Agreement of July 28, 1898:

STATE OF NEW YORK, *City and County of New York, ss:*

Thomas Mulhearn, being duly sworn, says he is Principal Clerk of the Publisher of the Mail and Express, a daily newspaper published in the city of New York; and that the notice, of which the annexed is a printed copy, has been regularly published in the said Mail and Express six times to wit: January 13th, 16th, 20th, 23d, 27th and 30th, 1903.

THOMAS MULHEARN.

Sworn before me this 25th day of February, 1903.
R. E. A. DON, JR.,
Notary Public, City and County of New York.

To depositors of "West Virginia deferred certificates" under agreement of deposit, dated the 28th day of July, 1898:

NOTICE is hereby given, pursuant to Article 2, paragraph *d*, Section 1 of the said agreement, that a plan of settlement of the public debt of West Virginia has been formulated and has been approved of by the Advisory Board appointed under said agreement, and all parties in interest are notified that the plan may be obtained, without cost in the city of New York, at the office of Messrs. Brown Brothers & Company, 59 Wall Street, and in the city of London, England, at the office of Messrs. Brown, Shipley & Company, Founders Court, Lothbury, E. C. and 123 Pall Mall, W.

Dated New York, January 13th, 1903.

JOHN CROSBY BROWN, *Chairman,*
CLARENCE CARY,
J. KENNEDY TOD,
BARTLETT JOHNSTON,
VIRGINIUS NEWTON,
R. P. CHEW,
Committee.

ROBERT L. HARRISON, *Secretary.*

93 STATE OF NEW YORK, *City and County of New York, ss:*

Theodore L. Peverelly, being duly sworn saith that he is the Principal Clerk of the Publisher of the New York Times, a daily newspaper printed and published in the city of and County of New York; that the advertisement hereto annexed has been regularly published in the said New York Times six times, to wit: on January 14, 17, 21, 24, 28, 31st 1903.

THEODORE L. PEVERELLY.

Sworn to before me this Feb. 25th, 1903.

[SEAL.] EUGENE C. MAUBORGNE,
Notary Public, New York County.

To depositors of "West Virginia deferred certificates" under agreement of deposit, dated the 28th day of July, 1898:

NOTICE is hereby given, pursuant to Article 2, paragraph d, Section 1 of the said agreement, that a plan of settlement of the public debt of West Virginia has been formulated and has been approved of by the Advisory Board, appointed under said agreement, and all parties in interest are notified that the plan may be obtained, without cost in the City of New York, at the offices of Messrs Brown Brothers and Company 59 Wall Street, and in the City of London, England, at the office of Messrs Brown, Shipley and Company, Founders Court, Lothbury E. C. and 123 Pall Mall, W.

Dated New York January 13th, 1903.

JOHN CROSBY BROWN, *Chairman.*
CLARENCE CARY,
J. KENNEDY TOD,
BARTLETT S. JOHNSTON,
VIRGINIUS NEWTON,
R. P. CHEW,
Committee.

ROBERT L. HARRISON, *Secretary.*

94 (Copy.)

KINGDOM OF GREAT BRITAIN AND IRELAND,
City of London, England, ss:

I, Rowland Lee, Assistant Manager of the Advertisement Department of the Daily Telegraph newspaper, published in the City of London, England, make oath and say that the advertisement "To Depositors of West Virginia Deferred Stock Certificates" attached hereto, was ordered for, and duly appeared in the Daily Telegraph

on the following dates: January 15, 19, 22, 26, 29, February 2, 5, 9, 12, 16, 19, 23—all of 1903.

(Signed) ROWLAND LEE.

Sworn before me

FRANCIS W. FRGOUT,

Deputy Consul-General of the United States of America at London, England, at 12 St. Helens Place, London, England.

March 18, 1903.

Copy of Advertisement Referred to Above.

To depositors of "West Virginia deferred certificates" under agreement of deposit, dated the 28th, July, 1898:

NOTICE is hereby given, pursuant to Article 2, Paragraph d, Section 1, of the said agreement, that a plan of settlement of the public debt of West Virginia has been formualted and has been approved by the Advisory Board appointed under the said agreement, and all partied in interest are notified that the plan may be obtained, without cost, in the City of New York, at the offices of Mess. Brown Brothers & Company, 59 Wall Street, and in the City *City* of London, England at the Offices of Messrs. Brown, Shipley & Company, Founders-court, Lothbury, E. C., and 123 Pall Mall, W.

95 Dated New York, January 13, 1903.

JOHN CROSBY BROWN, *Chairman.*
CLARENCE CARY,
J. KENNEDY TOD,
BARTLETT S. JOHNSTON,
VIRGINIUS NEWTON,
R. P. CHEW,
Committee.

ROBERT L. HARRISON, *Secretary.*

96 (Copy.)

I, Gilbert Plumbridge, Chief Clerk, in the employment of the proprietors of the Times newspaper, published in the City of London, England, make oath and say that the attached advertisement, "To Depositors of West Virginia Deferred Certificates," was orcered for, and duly appeared in the said newspaper on the following dates: Jan. 14, 17, 21, 24, 28, 31; February 4, 7, 11, 18, 21, all of 1903.

(Signed) GILBERT PLUMBRIDGE.

Sworn before me, Richard Westcott, Vice and Deputy United States Consul-General, at 12 St. Helens Place, London, England, on the 4th, March 1903.

(Signed) RICHARD WESTCOTT.

Vice and Deputy Consul-General of the United States of America at London, England.

This is the advertisement referred to in the above declaration.

To depositors of "West Virginia deferred certificates" under agreement of deposit, dated the 28th of July, 1898:

NOTICE is hereby given, pursuant to Article 2, Paragraph d, Section 1, of the said agreement, that a plan of settlement of the public debt of West Virginia has been formulated and has been approved of by the Advisory Board appointed under said agreement, and all parties in interest are notified that the plan may be obtained, without cost, in the City of New York, at the offices of Messrs. Brown Brothers & Company, 59 Wall Street, and in the City of London, England, at the offices of Messrs. Brown, Shipley & Company, Founders Court, Lothbury, E. C., and 123 Pall Mall W.

97 Dated New York, January 13, 1903.

JOHN CROSBY BROWN, *Chairman.*
CLARENCE CARY,
J. KENNEDY TOD,
BARTLETT S. JOHNSTON,
VIRGINIUS NEWTON,
R. P. CHEW,
Committee.

ROBERT L. HARRISON, *Secretary.*

98 *West Virginia Debt Settlement.*

Committee.		Advisory Board.
John Crosby Brown, Chairman.	George F. Baker,	W. Pinkney Whyte.
J. Kennedy Tod,	Barlett S. Johnston,	Wayne MacVeigh.
Clarence Cary,	Wm. C. Legendre,	Lyman J. Gage.
R. P. Chew, of West Virginia.		

Robert L. Harrison, Secretary.

Depository

Brown Brothers & Company.

Copy

NEW YORK, *Dec. 13th*, 1904.

Messrs. Brown Brothers & Company, Depository:

We, the undersigned Committee, heretofore appointed and constituted under the certain agreement of July 28, 1898, between ourselves and the holders of deposited certificates of indebt-ness or securities known as the Virginia Deferred Certificates, hereby declare that the certain plan of settlement made and approved by the undersigned Committee and the Advisory Board, under date of December 3, 1902, became effective by such approval and by the due publication of such plan under the terms of the said agreement and further by reason

of the absence of any notification in writing, or otherwise, from or on the part of the holders of any of the deposited certificates, for more than thirty days after the said publication, of any unwillingness to accept such proposed settlement.

(Signed) JOHN CROSBY BROWN, *Chairman.*
ROBERT L. HARRISON, *Secretary.*

The above was received in due form this 13th. day of December, 1904.

(Signed) BROWN BROTHERS & CO.

99 EXECUTIVE DEPARTMENT,
CHARLESTON, WEST VIRGINIA, *January* 27, 1905.

To the Honorable President and Members of the State Senate:

GENTLEMEN: The accompanying papers after oral statements had been made to me by a Committee representing the State of Virginia, consisting of Hon. Randolph Harrison, Chairman, Col. Joseph Button, Secretary, and Hon. William A. Anderson, Attorney General of that State, were duly presented to me for transmission to the Legislature of West Virginia.

The papers consist of an address or statement of the Committee, representing the Commission appointed by the State of Virginia "to provide for the settlement with West Virginia of the proportion of the public debt of the original State of Virginia proper to be borne by West Virginia," and of a copy of the Act of March 6th, 1900, of the State of Virginia, enlarging the powers and duties of said Commission.

I deem it my duty to transmit these papers for your information.

Respectfully yours, ALBERT B. WHITE, *Governor.*

The papers accompanying the communication of the Governor are as follows:

To His Excellency A. B. White, Governor of the State of West Virginia:

SIR: Under and by virtue of a joint resolution of the General Assembly of the State of Virginia, approved March 6th, 1894, a commission consisting of Hons. Taylor Berry, H. T. Wickham, H. D. Flood, John B. Moon, Randolph Harrison, H. H. Downing and William F. Rhea was continued for the purpose of opening
100 negotiations with the State of West Virginia looking to the adjustment of the proportion of the debt of the original State of Virginia proper to be borne by West Virginia, and by a communication bearing date on the 7th day of January, 1895, from the Hon. Chas. T. O'Ferral, then Governor of Virginia, the Honorable William A. MacCorkle, then Governor of West Virginia, was informed of this fact.

Since the date last named the Honorable Taylor Berry has departed this life, and Honorable J. Thompson Brown has been made

a member of the Commission in his stead. And by an act of the General Assembly of Virginia, approved March 6th, 1900, the powers and functions of the Commission have been materially changed and enlarged, as will be seen by an inspection of said act, a copy of which is herewith submitted.

It will be observed that under the provisions of this act the Commission acting by and with the advice and approval of the Attorney General of Virginia, is authorized to make a final settlement and adjustment with West Virginia with respect to the debt of the original State, provided at least two-thirds in amount of the securities known as Virginia Deferred Certificates issued under the Virginia Act of 1871, and a majority of all the other certificates issued by Virginia with reference to said settlement, exclusive of those held by the Literary Fund and Sinking Fund of Virginia, were deposited with or placed subject to the control of the Commission.

On the 14th day of December, 1904, there were so placed on deposit in the name of the Commission, and subject to the control and disposal, $12,910,555.89 of such certificates, embracing much more than two-thirds of those of 1871, as aforesaid, and a very large majority of all the others, so that the Commission is now authorized, and empowered by and with the advice and approval of the
101 Attorney General, to make a settlement and adjustment with West Virginia as provided in said act of March 6th, 1900. The evidence of the deposit of the said certificates with the Commission as above stated is of course subject to inspection by Your Excellency and the proper authorities of West Virginia on request.

Looking to opening negotiations with West Virginia, the commission at a meeting thereof, held in Richmond, Virginia, December 14th, 1904, authorized the appointment of a sub-committee, consisting of the undersigned Randolph Harrison, Chairman, H. D. Flood, H. H. Downing and John B. Moon, who together with the Attorney General of Virginia should invite the attention of Your Excellency to the unsettled matters between the two States and endeavor to negotiate a settlement of the same on some equitable basis to be agreed upon by the authorities of the two States.

The undersigned, the sub-committee so constituted, acting by and with the advice of the undersigned Attorney General of Virginia, therefore beg leave to call to the attention of Your Excellency the unsettled matters between the two States above referred to, growing out of the debt of the original State, and so respectfully request that they may be laid before the legislature of your State, now in session for their consideration; and that some action may be taken by the Legislature of your State for the purpose of entering into negotiations with the undersigned for a settlement between the two States of the matters aforesaid on some equitable basis either by the appointment of a committee to conduct such negotiations on behalf of your State, or by such other action as the legislature of your State may deem appropriate.

And the undersigned further beg in this connection to call attention to the following facts:

1. That when the State of West Virginia was formed, the orig-

inal State of Virginia was deprived of more than one-third of
102 its white population and about one-third of its territory, embracing that portion of its territory which by reason of its mineral wealth has since proven to be the most valuable and productive part of the original State.

2. The ordinance of the convention which met at Wheeling in 1861, in providing for the formation of the State of West Virginia, further provided that: "The new State shall take upon itself a just proportion of the public debt of the Commonwealth of Virginia prior to the first day of January, 1861, to be ascertained by charging to it all State expenditures within the limits thereof, and a just proportion of the ordinary expenses of the State government since any part of said debt was contracted, and deducting therefrom the moneys paid into the Treasury of the Commonwealth from the counties within said new State during the same period." The obligation to assume an equitable proportion of the said debt was again recognized in the first constitution of West Virginia, which was ratified by a vote of her people in 1863, and in which article eight, section eight provided as follows: "An equitable proportion of the public debt of the Commonwealth of Virginia, prior to the first day of January, 1861, shall be assumed by this state; and the Legislature shall ascertain the same as soon as practicable and provide for the liquidation thereof by a Sinking Fund sufficient to pay the accruing interest and redeem the principal within thirty-four years." The Constitution of West Virginia of 1872, contains these provisions, article ten, section four: "No debt shall be contracted by this State except to meet casual deficits in the revenue to redeem a previous liability of the State," etc., etc., and section five specifies that "The power of taxation of the Legislature shall extend to provisions for the payment of the State debt and interest thereon," etc.

3. The public debt of the original State of Virginia, at the time of the dismemberment, amounted to something more than
103 $30,000,000 no part of which has ever been borne by West Virginia, nor has any settlement or adjustment been made by West Virginia, either with the present State of West Virginia, or with the creditors of the original State, to ascertain what her liability might be with respect to said debt, but the whole of it has been left for adjustment to the people of the present State of Virginia.

4. It has been understood that West Virginia was not willing to negotiate directly with the creditors of the original State, and for that reason, and also in order to comply with the requirements of said act of March 6th, 1900, the deposit of said certificates of December 14th, 1904, was made with the Virginia Commission; so that the Commission with the Attorney General of Virginia are now authorized both on behalf of the State of Virginia, and also on behalf of a large majority of all certificate holders interested, to make a final settlement and adjustment of the matters above referred to, and thus finally conclude and dispose of questions which have been long left unsettled to the detriment, it is believed, of both States.

The undersigned only seek to present these matters to your Excellency and through you to the Legislature of your State, because

they believe it to be their duty to their own State to do so; and while no accounting or adjustment in the premises has ever been had by West Virginia, either with Virginia or the creditors of the original State, yet inasmuch as the matters involved are now presented by the undersigned, with new and enlarged powers on their part to make and carry into effect a complete and final settlemnet between the States, it is hoped that the suggestions herein containd will receive favorable consideration and action on the part of your Excellency and the Legislature of your State.

Respectfully submitted.

(Signed) RANDOLPH HARRISON
H. H. DOWNING
H. D. FLOOD
JOHN B. MOON
Committee.

Approved:
WILLIAM A. ANDERSON,
Attorney General of Va.

January 25, 1905.

Here follows copy of act of March 6, 1900.

101 ADDRESS

On Behalf of the Virginia Debt Commission

BEFORE

THE JOINT COMMITTEES ON FINANCE OF THE WEST VIRGINIA LEGISLATURE.

In Relation to West Virginia's Contributive Share of the Debt of Virginia.

By RANDOLPH HARRISON.

Charleston, West Virginia, February 1, 1905.

Mr. Chairman, and Gentlemen of the Finance Committees of the two Houses of the Legislature of West Virginia:

We had the honor a few days ago to present to His Excellency, the governor of West Virginia, a communication in behalf of the state of Virginia in relation to the unsettled matters between the two states, growing out of the debt created before the dismemberment of Virginia. We were officially advised that that communication had been transmitted to the legislature, and by it referred to the appropriate committees for further consideration.

We appear before you tonight in response to an invitation from the two finance committees of this body for the purpose of more fully stating the reasons which impel Virginia to invite your attention to this subject.

It gives us pleasure to avail ourselves of this opportunity to make known to you the object of our mission here.

In considering the question as to West Virginia's obligation to bear a just proportion of the public debt of Virginia, it will be necessary for us to review the origin of that debt, the manner in which and the purposes for which it was created, and West Virginia's relation to the subject.

Beginning with the year 1825 Virginia entered upon an extensive system of internal improvements. She had in mind the development of her western territory. Her statesmen had known for many years prior to that time that the territory now composing
105 the state of West Virginia contained immense resources of wealth, but there had been no definite ascertainment of that fact. They realized that it was essential, in order to ameliorate the condition of her people, who resided in that territory, and in the interest of all the people of Virginia, to develop that section, and establish communication between it and the Virginia seaboard. It was for this purpose that Virginia assumed the burden of a public debt. The development of this system of public improvements was progressive. During the first twenty-five years the debt had grown to about ten millions of dollars; between 1850 and 1861 it was increased by twenty millions of dollars. It is a matter of interest in passing to refer to the fact that the members of the Virginia legislature representing the counties that now compose this State unanimously voted to increase the debt. It is a notable fact that on several occasions it would not have been increased but for the united support of the delegates representing this section of the state, for the eastern and tidewater counties generally opposed the system of internal improvements which Virginia had undertaken. I do not mention this in any critical spirit; it was natural that the residents of this part of the state should want to develop their territory, and I am sure that any one similarly situated at that time would have been governed by the same considerations. The great argument advanced for the increase of the public debt was that, by the development of this section of the state by the construction of turnpikes, canals, bridges, railroads, etc., the wealth of Virginia would be so materially increased that she could bear the burden of the debt without feeling it. And so it came to pass that on the 1st of January, 1861, the public debt of Virginia amounted to about thirty millions of dollars, every dollar of which had been expended in works of internal improvements, the primary object of which was the development of this section of Virginia's territory.

On the 17th of April, 1861, the state of Virginia passed the ordinance of secession, withdrawing from the Union. Shortly thereafter, in the month of May, a number of citizens residing in
106 the town of Clarksburg, met together and called a convention to meet in Wheeling on the 11th of June following. That convention assembled in Wheeling, and organized what was known as the "Restored Government of Virginia." They ignored the government at Richmond, denounced it as revolutionary, and declared that it did not represent the state of Virginia. On June the 20th this convention elected Francis H. Pierpont governor of Virginia, and called a legislature together at Wheeling on July the 1st, 1861,

which it declared to be the only true and lawful legislature of the state. This legislature, on July the 9th, elected two United States senators, and provision was made for the election of three congressmen. Both Houses of Congress admitted these members as from the State of Virginia.

A second convention assembled at Wheeling on the 20th of August, 1861. The "Restored Government of Virginia," having been previously organized, this convention, claiming to represent the state of Virginia, met for the purpose of "creating a new state," and on the 20th of August, 1861, it adopted an ordinance declaring it to be the sense of that convention that a new state should be formed "out of a portion of the territory of Virginia," and to embrace the counties specified in the ordinance.

This ordinance contained the following provision as the condition upon which the new state should be created:

"The new state shall take upon itself a just proportion of the public debt of the Commonwealth of Virginia prior to the first day of January, 1861, to be ascertained by charging to it all state expenditures within the limits thereof and a just proportion of the expenses of the state government since any part of said debt was contracted, and deducing therefrom the moneys paid into the treasury of the Commonwealth from the counties within said new state during the same period."

This was the first step towards the formation of the state of West Virginia, and in taking this step it was expressly stipulated
107 that the old state would consent to her dismemberment only on condition that the State should assume a just proportion of her public debt.

This convention authorized delegates to be elected to another convention to assemble in Wheeling on the 26th day of November, 1961, for the purpose of forming a constitution for the new state in accordance with the terms of the ordinance of August the 20th. Accordingly a third convention, claiming to represent Virginia, assembled in Wheeling on November 26th, 1861, and prepared a constitution for the State of West Virginia, the eighth section of the eight article thereof providing as follows:

"An equitable proportion of the public debt of the Commonwealth of Virginia prior to the first day of January, 1861, shall be assumed by this State, and the Legislature shall ascertain the same as soon as practicable and provide for the liquidation thereof by a sinking fund sufficient to pay the accrued interest and redeem the principal within thirty-four years."

This provision was adopted in pursuance of the binding ordinance of the organic convention of August the 20th, 1861; it not only pledged the new State to bear a just proportion of the public debt of Virginia, but required her Legislature to ascertain the same and provide for its payment. Does not that seem fair to you? It seems so to me. West Virginia had helped to create the debt, and reaped a share of its benefit. Do you not think in fairness and justice she ought to bear a just proportion of it, as she agreed to do?

On the 3rd of May, 1862, this constitution was submitted to the

people of the counties composing the new State of West Virginia for ratification, and it was duly reported as ratified by a majority of the voters at the polls.

108 On the 13th of May 1862 the legislature of the "Restored Government of Virginia" passed an act giving Virginia's consent to the formation of the new state, "under the provisions set forth in the constitution for the state of West Virginia." By that act Virginia expressly stipulated that her consent was given "under the terms stated in the constitution of the state of West Virginia," and this constitution, as we have seen, expressly provided that the new state would bear "its just proportion of the debt of the old state."

The "Restored Government of Virginia" instructed her representatives and senators in Congress to use their influence in furtherance of the passage of an act to create the state of West Virginia.

On the 31st day of December 1862 the act was passed creating the state of West Virginia. The debates in Congress show that West Virginia would not have been admitted as a state but for her promise to bear a just proportion of the debt of the old state. A brief extract from the debates, when the bill providing for the admission of West Virginia was under consideration, will serve my purpose tonight:

Mr. OLIN: "I desire to ask what will become of the bonds and other obligations which Virginia has issued or incurred by the recognition of a new state?"

Mr. HUTCHINS: "I will answer my friend from New York. Here is the provision of the Constitution of West Virginia in reference to that matter: 'An equitable portion of the debt of Virginia prior to January the first, 1861, shall be assumed by this state, and the legislature shall ascertain the same as soon as may be practicable.' "

Mr. CRITTENDEN: "* * * There is another question; the state of Virginia owes a large debt. How is this debt to be divided?"

Mr. BLAIR: "The constitution framed by the convention of the people of the proposed new state binds the new state to pay its just proportion of the debt owed by Virginia prior to the ordinance of secession."

Mr. CRITTENDEN: "I only knew that in this bill there was
109 no provision made for a division of the said debt. The gentleman tells us there is provision made for it in the constitution, and I am satisfied with that. As it has been attended to, I have no more to say about it." (Extract from Congressional Globe, 37th Congress, quoted by Hon. J. M. Mason in pamphlet published by him on the subject of the Virginia debt.)

No one can doubt, therefore, that West Virginia owes her existence to her promise to bear a just proportion of the debt of the old state.

The act admitting West Virginia into the Union was signed, as I have stated, on the 31st day of December, 1862, and on June 20, 1863, in pursuance of the proclamation of the president, she took her place in the family of states.

I have given this sketch of the origin of the state of West Virginia in order to show that she is solemnly pledged to bear a just proportion of the debt of Virginia.

The constitution of West Virginia adopted in 1872 contains the following provisions relating to the public debt.

Article X, Sec. 4, provides that no debt shall be contracted except * * * to redeem a previous liability of the state; and sec. 5 provides that the power of taxation shall extend to provisions for the payment of the state debt and interest thereon. There was no public debt for West Virginia to provide for except her obligation to bear her just proportion of the debt of the state of Virginia.

The legislature of the "Restored Government of Virginia" on the 4th of February, 1863 passed an act transferring to the state of West Virginia all the property of the state of Virginia in the territory of the proposed new state, but on condition that West Virginia "should account for it in the settlement to be had with Virginia."

It is hardly necessary for me at this time to refer to the value of the property so transferred. Suffice it to say that by that act several millions of dollars worth of property was transferred to West Virginia; but the transfer was made on condition that West
110 Virginia should account for it in the settlement to be had with Virginia.

The stock owned by Virginia in banks alone situated within the territory of West Virginia amounted to several hundred thousand dollars, and in respect to this stock West Virginia, in her Constitution of 1863, authorized the legislature to dispose of the same, but expressly provided that the proceeds of such sale should be applied to the liquidation of the public debt; thereby again recognizing in her fundamental law her obligation to share with Virginia the burden of her public debt.

So, gentlemen, I think you must agree with me that West Virginia's obligation to pay a just proportion of the debt of Virginia is the foundation of her political existence. It is an essential part of the very Constitution under which Congress admitted her into the Union. West Virginia has not always been unmindful of her obligation and duty in this respect. After the war an effort was made by the two states to ascertain by negotiation the fair proportion of the old debt which each should bear. In February 1870 Virginia sent delegates to Wheeling, West Virginia, then the capital of this state, for the purpose of inviting the governor and legislature of West Virginia to unite with her in making a statement and settlement of this account. But the governor of West Virginia did not think the time opportune to deal with the subject because the suit between the two states involving the two counties of Jefferson and Berkeley had not then been decided. Soon thereafter the governor of West Virginia sent commissioners to Virginia with authority to state the account, but at that time Governor Walker of Virginia did not feel that he had authority to appoint commissioners, because the legislature of Virginia had in the meantime passed an act to submit the question to arbitration, and so nothing came of this effort to settle the controversy.

I am aware of the fact that at that time some feeling existed on the part of the commissioners of West Virginia as to the man-
111 ner in which they had been received by the authorities in Virginia; but it is, of course, difficult to determine at this

distance the cause for any misunderstanding between those commissioners and Governor Walker. The records only show that the Governor of Virginia felt constrained to decline to appoint commissioners for the reason stated, and renewed his invitation to the State of West Virginia to submit the question to arbitration.

Again in recognition of West Virginia's obligation to Virginia in this matter, the Governor of West Virginia had this to say in a letter dated May 16, 1881:

"The people of this State are willing and anxious to adjust with the mother State the amount of their liability on account of the public debt. The liability can be readily ascertained when the mother state is willing to state the account with us. The convention of the State of Virginia held in Wheeling on the 20th of August, 1861, in giving its consent to the formation of this state out of the territory of the mother state, provided by Section IX of the ordinance passed that day as follows:

"The new State shall take upon itself a just proportion of the debt of Virginia prior to January 1, 1861, to be ascertained by charging to it all state expenditures within the limits thereof and a just proportion of the ordinary expenses of the state government since any part of said debt was contracted and deducting therefrom the moneys paid into the treasury from the counties included within the new state during the same period."

"The validity of this ordinance and the convention which passed the same has received the sanction of every department of the national government.

The Supreme Court of the United States, in a suit in that court instituted by the state of Virginia against West Virginia to
112 recover jurisdiction over the counties of Jefferson and Berkley, now a part of this state, adjudged said ordinance valid and binding. This state was admitted in pursuance of this ordinance. We admit it is binding authority, and hold ourselves ready at all times to settle with our mother state on that basis. Our obligation is to the mother state, and not to creditors of that state." (Extract from letter published by Hon. J. M. Mason in a pamphlet by him on the subject of the Virginia debt.

So, gentlemen, you perceive that the public authorities of West Virginia in the past fully acknowledged the binding obligation resting on your state to bear a just proportion of the debt. That obligation is none the less binding now than it was then.

Nothing having resulted from the efforts of the two states to ascertain and adjust their respective liabilities, Virginia felt obliged to make some arrangement for the funding of her debt. The war had intervened and left her prostrate and impoverished, but still she recognized her duty to make a fair adjustment with her creditors who had purchased her bonds when her credit was higher than that of any other state, and to that end, on the 30th of March, 1871, her Legislature enacted what is known as the Funding Bill.

By the terms of this act Virginia assumed responsibility for two-thirds of the Debt. The act provided that a new bond should be issued for two-thirds of each old bond, and that a certificate should

be given to represent the other one-third, to bear interest at six per cent., and await payment until Virginia and West Virginia had come to a settlement; and Virginia agreed to hold the old bond, so far as unfunded, in trust for the holder of said certificate.

The debt of Virginia at that time, with interest added, amounted to about forty-five millions of dollars, of which Virginia assumed as her just proportion, two-thirds, or about thirty millions of dollars. The form of the certificate issued, as provided by the Funding Bill, was as follows:

Copy of Certificate under Act of March 30, 1871.

113 "COMMONWEALTH OF VIRGINIA.

No. ——. $——.

TREASURER'S OFFICE, RICHMOND, VA.

"This is to certify that there is due unto —— —— heirs, executors, administrators or assigns $—, being one-third of bond surrendered under the provisions of an act approved March 30th, 1871, entitled 'An Act to provide for the funding and payment of the public debt,' namely, Bond No. —, with interest amounting to $—. Payment of said one-third with interest thereon at the rate of six per cent. per annum will be provided for in accordance with such settlement as shall hereafter be had between the state of Va. and W. Va. in regard to the public debt of the state of Virginia existing at the time of its dismemberment, and the State of Va. holds said bond so far as unfunded in trust for the holder hereof or his assigns.

"In testimony whereof this certificate has been signed by the Treasurer and countersigned by the Second Auditor, as provided by law.

"——— ———,
Treasurer of the Commonwealth of Virginia.

"——— ———,
"Second Auditor of Virginia."

Under the foregoing act about fifteen million dollars of these certificates were issued, and the old bonds were delivered up and are now held by Va., so far as unfunded, in trust to secure the payment of said certificates. Those certificates do not in terms release Va. from liability for their payment; they clearly import that there would be a settlement between Va. and W. Va., and that they would be paid when such settlement was had. Va. undoubtedly intended that when a settlement was had the certificate holders must accept W. Va.'s share in full payment of the unsettled one-third of the debt; but under the form of the certificate in might be contended that Va. was liable for the difference between the face of the certificates and the amount ascertained to be due by W. Va. Hence you will observe that it is of the greatest importance to Virginia to bring about, if possible, a settlement of this controversy, not only because it
114 is a duty she owes the creditor, but especially for her own protection.

In 1879 the legislature of Virginia passed another act for the funding of her debt by which provision was made the issuance of new bonds to take the place of those outstanding. With the bonds so issued certificates were issued for the unsettled one-third of the debt similar in form to the certificates of 1871, with this important difference, namely, that it was expressly stipulated in the certificate that its acceptance should be a full and absolute release of Virginia from all liability on account of said certificates. While the certificates issued under the act of 1879 imposed no liability, therefore, on Virginia they nevertheless provided that Virginia would aid the creditors holding such certificates, or certificates issued under previous acts, in negotiating with West Virginia for a friendly settlement of the claims of such creditors against the State of West Virginia.

In 1882 a third act for the funding of Virginia's debt was passed and under that act the certificates issued to represent the unpaid one-third of the debt expressly provided that they should be accepted without recourse on Virginia for their payment. These certificates, therefore, like those issued under the act of 1879, impose no liability on Virginia.

By act approved on the 20th of February 1892 Virginia made a full and final settlement with her creditors and the certificates issued under this act, like those issued under acts of 1879 and 1882, expressly provided that they should be accepted without recourse on Virginia and hence they impose no liability on Virginia.

In as much as the unsettled one-third of the debt of the original state of Virginia is represented by the foregoing four classes of certificates, it becomes important to know the amount of those certificates outstanding.

The office of the second auditor of Virginia shows as fol-
115 lows in respect to these certificates:

Under the act of March 30, 1871, there were issued of these certificates	$15,281,970.47
Of these certificates Virginia holds in her sinking fund and in her literary fund	2,578,518.68
Leaving outstanding in the hands of the public of the certificates of March 30, 1871	$12,703,451.79

The foregoing certificates do not in terms release Virginia from liability for their payment.

Under the act of March 28, 1879, there were issued, and are outstanding in the hands of the public, certificates amounting to	$564,258.87
Under the act of February 14, 1882, there were issued of these certificates	1,775,603.48
Of these certificates Virginia holds in her sinking fund	166,943.33
Leaving outstanding in the hands of the public	$1,609,660.15
Under the act of February 20, 1892, there were issued certificates outstanding in the hands of the public	$605,320.78

The three last mentioned classes of certificates were issued and accepted without recourse on Virginia.

The total issue of certificates, therefore, representing the unpaid one-third of the debt of the original state of Virginia is	$18,227,153.60
Of that amount Virginia holds in her sinking fund and in her literary fund	2,745,465.01
Leaving outstanding in the hands of the public of all classes of certificates	$15,481,691.59

A debt or claim of that magnitude cannot be disposed of by ignoring it, or attempting to waive it aside. The only way to dispose finally of it is to settle it.

Realizing the importance to her own interests of bringing about a friendly settlement of the matter, and in fulfillment of her promise to the creditors to aid in bringing it about Virginia, by
116 resolution of March 6, 1894, appointed commissioner- for the purpose of negotiating with West Va. for an adjustment of the proportion of the debt proper to be borne by her.

In January 1895 Governor O'Ferrell of Virginia communicated a copy of that resolution to Governor McKorkle of W. Va. No response was ever made by W. Va., but we learned through the press that your legislature declined to negotiate with Va. on the basis stated in the resolution creating her commission. We think the purpose and intent of that resolution was misunderstood, but at all events, nothing was done.

Subsequently, by an act of the General Assembly of Va., approved March 6, 1900, the powers of this commission were materially enlarged and the commission was authorized under the terms stated in the act to conclude a settlement with W. Va. or to take such action to that end as might be approved by the attorney general of Va. Under the provisions of this act the commission, acting by and with the advice and approval of the attorney general of Va., is fully empowered to make final settlement with W. Va., provided at least two-thirds of the certificates of 1871 and a majority of all the other certificates outstanding in the hands of the public were deposited with or placed subject to the control of the commission. The requirements of that act have been complied with in a manner which far exceeded our most sanguine expectations, for there have been deposited, subject to the control of the commission, more than five-sixths of the entire issue of the certificates. This unexpected and desirable result has been brought about through the instrumentality of Brown Brothers & Co., bankers of New York, the agents of the certificate holders' committee. The standing of this house is doubtless known to you, or certainly to many of you; it does not engage in "frenzied finance," but on the contrary it is known as one of the most reliable and responsible firms in the financial world.

Through the agency of Brown Bros. Co. more than five-sixths of all the certificates outstanding in the hands of the public have been

assembled and are held on deposit subject to the control of
117 the Virginia commission under an agreement with the owners of those certificates to accept whatever may be received from West Virginia in full discharge of the unsettled one-third of the debt of Virginia.

Of the certificates of 1871 outstanding in the hands of the public (amounting to $12,703,451.79) Brown Bros. & Company now hold $10,639,776.42.

Of the certificates of 1879 outstanding in the hands of the public (amounting to $564,258.87) Brown Bros. & Company now hold $440,642.61.

Of the certificates of February 14, 1882, outstanding in the hands of the public (amounting to $1,608,660.15) Brown Bros. & Company now hold $1,285,680.55.

Of the certificates of February 20, 1892, outstanding in the hands of the public (amounting to $605,320.78) Brown Bros. & Company now hold $544,456.31.

The aggregate amount of all certificates held by Brown Bros. & Company is, therefore, $12,910,555.89.

The Virginia commission has full power and authority to deliver up those certificates as an entirety to be cancelled upon payment by West Virginia of whatever may be ascertained to be her just proportion of the debt of Virginia—be it much or little. We stand ready, of course, to exhibit the evidence of the deposit of those certificates with us to the proper authorities of West Virginia.

The contract under which these certificates are deposited subject to the control of the Virginia Commission, will expire in September 1905 unless, in the meantime, negotiations for a settlement, or some action looking to that end, have been undertaken.

At a meeting of the Virginia commission held in Richmond on December 14, 1904, a sub-committee was appointed who, together with the attorney general of Virginia, were requested to communicate
these facts to the governor and legislature of West Virginia,
118 and invite their co-operation in a friendly adjustment and settlement of the account between the two states. Our visit here is in discharge of the duty assigned us. Do not imagine that Virginia has the slightest intention of meddling with the affairs of West Virginia, or of volunteering advice. She has ventured to bring the subject to your attention in compliance with her undertaking to the creditors, and especially because her own interests are involved. Virginia felt that she would be derelict in her duty to herself and in her duty to your state if she failed to bring to your *notice* the exceptional opportunity now presented to dispose finally of this vexatious question.

Is these any reason why West Virginia should not join Virginia in stating this account? I am sure, gentlemen, you can not dissent from the proposition that your state is liable for some part of the debt, whatever the amount may be. As far as it is possible for a state to be committed by the solemn provisions of its organic law and by the repeated declarations of its public authorities, West Virginia is bound—bound in equity and good conscience—to bear whatever

may be ascertained to be her fair proportion of the debt of Virginia. No account has ever been stated between the two states. How, then, can West Virginia declare that she owes no part of this debt until the account is stated? She is solemnly pledged to state this account. Ought she not to redeem this pledge? No state can refuse to do what is fair and right in respect to her public obligations and not suffer for it. We do not ask that West Virginia shall commit herself as liable in any specific amount. We make no claim against her for any definite sum. We do not know what a statement of the account will show; if it shows that West Virginia is not liable for any amount, that will end the matter. We only ask that your state will, through the proper authorities, unite with Virginia in stating the account between the two states in order that the question of her
119 liability, if any, may be authoritatively ascertained. The work of your commission will, of course, be subject to such action as West Virginia might deem proper in the premises.

Would any one of you, if a man thought he had an honest claim against you, be afraid to meet him and consider it with him? Then why should you hesitate to commit your state to the same course in this respect which you as an individual would not hesitate to take?

West Virginia has always taken the position that her li-bility on account of this debt was to Virginia and not to the creditors, and that her liability must be ascertained on the basis of the Wheeling ordinance. This ordinance not only committed West Virginia to bear her just proportion of the debt of Virginia, but states how the account shall be stated in order to ascertain the amount of the debt for which West Virginia is liable. We are ready to unite with you in stating the account on the basis of the Wheeling ordinance, or West Virginia may choose any other just and equitable basis, if she prefers, on which the account shall be stated, and we will abide by her choice. We have no interest whatever in this matter except to discharge our duty to our state by bringing about, if possible, a fair and final settlement of this controversy. Unless the two states can dispose of it we may confidently expect it to be referred to the courts for settlement, and in that event the decision of the court has already been plainly foreshadowed. In the case of Hartman *v.* Greenhow (decided October term, 1880), 102 U. S., page 672, the Supreme Court reviewed the legislation of Virginia in relation to her public debt, and in referring to West Virginia's liability for a portion of it the court, through Justice Field, had this to say:

"It appears from the statutes to which we are referred—and we know the fact as a matter of public history—that prior to the late civil war Virginia had become largely indebted for moneys borrowed to construct public works in the state. The moneys were ob-
tained upon her bonds, which were issued to an amount
120 exceeding $30,000,000. Being the obligation of a state of large wealth, which never allowed its fidelity to its promises to be questioned anywhere, the bonds found a ready sale in the markets of the country. Until the civil war the interest on them was regularly and promptly paid. Afterwards the payments ceased, and until 1871, with the exception of a few small sums remitted in

oin during the war to London for foreign bondholders, or paid in
Virginia in Confederate money, and a small amount paid in 1866
nd 1867, no part of the interest or principal was paid. During
he war a portion of her territory was separated from her, and by its
eople a new state, named West Virginia, was formed, and by the
Congress of the United States was admitted into the Union. Nearly
ne-third of her territory and people were thus taken from her
urisdiction. But, as the whole state had created the indebtedness
or which the bonds were issued, and participated in the benefits
btained by the moneys raised, it was but just that a portion of the
ndebtedness should be assumed by that part which was taken from
ner and made a new state. Writers on public law speak of the prin-
iple as well established that where a state is divided into two or more
states, in the adjustment of liabilities between each other, the debts
of the parent state should be ratably apportioned among them. On
this subject Kent says: "If a state should be divided in respect to ter-
ritory, its rights and obligations are not impaired; and if they have
not been apportioned by special agreement, their rights are to be en-
joyed and their obligations fulfilled by all the parts in common."
(1 Com., 26.) And Halleck, speaking of a state divided into two or
more distinct and independent sovereignties, says: In that case the
obligations which have accrued to the whole before the division are,
unless they have been the subject of a special agreement, ratably
binding upon the different parts. This principle is established by
the concurrent opinions of text writers, the decisions of the courts,
and the practice of nations." (Internat. L., ch. 3, sec. 27.)

"In conformity with the doctrine thus stated by Halleck, both states—Virginia and West Virginia—have recognized in their constitutions their respective liability for an equitable proportion of the old debt of the state, and have provided that measures should be taken for its settlement * * *

"The Constitution of West Virginia, which went into effect in 1863, declared that "An equitable proportion of the public debt of the Commonwealth of Virginia prior to the first day of January 1861," should "be assumed" by the state, and that the legislature should "ascertain the same as soon as practicable, and provide for the liquidation thereof by a sinking fund sufficient to pay the accruing interest and redeem the principal within thirty-four years." (Art 8, sec. 8.)"

Virginia lost by the formation of the state of West Virginia one-third of her territory and more than one-third of her white population. To that extent she was deprived of possessions which belonged to her when the debt was contracted. Suppose fifty of the remaining counties of Virginia should decide to organize themselves into a new state to be called "Eastern Virginia;" would you say it was fair and right for them to do so and take the public property within their borders, and leave the remaining counties constituting the state of Virginia to bear the burden of a debt created for the benefit
121 of the whole? The Supreme Court of the United States has, as we have just seen, answered that question in the negative, and I am sure your sense of justice would impel you also to answer

"No." In that event you could not justify West Virginia in declining to bear a just proportion of the debt of the mother state.

Another decision of the Supreme Court of the United States has an important bearing on the liability of the two states on account of this debt. I refer to the recent decision of South Dakota against North Carolina (decided February 1, 1904), 192 U. S., page 286. North Carolina had issued certain bonds which were outstanding in the hands of purchasers. She declined to make provision for their payment, feeling that she was justified in that course. In order to test the liability of North Carolina a holder of a large amount of those bonds donated ten of them of the face value of $10,000.00 principal to the state of South Dakota, with the understanding that South Dakota, would institute suit against North Carolina to enforce payment. An individual cannot sue a state, but the right of one state to sue another is expressly preserved by the Constitution of the United States. South Dakota accepted the gift and instituted suit in the Supreme Court of the United States against North Carolina, and the court gave judgment against North Carolina for the amount of the bonds with accrued interest.

If when the contract under which we hold control of the certificates expires nothing has been done looking to a settlement, and those certificates should be released and restored to the owners, it may prove to be the opening of a veritable Pandora's box. Under the authority of the South Dakota–North Carolina case, the attempt might be made to enforce collection of this debt by donating some of the certificates of the issue of 1871 to a state on condition that a suit should be instituted against Virginia and West Virginia to compel the statement of the account between them, and the payment of the liability apportioned to each one. We are reliably
122 informed that the governor of one of the states has already been approached with an offer to donate to his state $100,000.00 of those certificates on condition that he would cause such a suit to be instituted. He declined, but some other governor might not be influenced by as delicate sense of propriety.

We feel that these considerations should appeal strongly to you to unite with Virginia in the effort to make a friendly settlement of this matter. Surely the two states can make a far better settlement than the courts can make for them. If we do not take the matter in our own hands the only alternative is a settlement by compulsion. Resolutions that we do not owe anything will not avail. The holders of a debt amounting to about fifty millions of dollars will not be satisfied with your statement or with ours that we do not owe it. Unless your state will join Virginia in the effort to dispose finally of this question, you may rest assured that, like Cæsar's ghost, it will meet you at Philippi. The unsettled one-third of this debt now amounts to about fifty millions of dollars. No one can say what the extent of West Virginia's liability will be if the controversy is settled in court, but I will venture the assertion that in a friendly adjustment, it is entirely probable that we can effect a settlement within one-tenth of that sum. In this connection I cannot forbear a reference to what Virginia has done towards bearing the burden of

this debt. The records of the office of the second auditor of Virginia show the following amounts paid by Virginia on account of the public debt of the old state since January 1, 1861:

123 Amount of interest paid from January 1, 1861, to January, 1905		$34,551,642 85
Bonds now held in sinking fund	$1,111,500 00	
Bonds paid off and cancelled	8,863,994 49	
		9,975,441 49
Total of interest and bonds paid off		$45,527,134 34
New bonds of Virginia issued for portion of debt funded and assumed by her		26,850,820 00
Total sum of principal and interest paid off and assumed and now carried by Virginia on account of the old debt		$72,377,954 34

From the foregoing you will observe that the public debt of Virginia is now $26,850,820.00, and on this sum she pays an annual interest charge of $877,862.27. (Report of the second auditor of Virginia for 1904 in relation to the public debt.)

Do you not think that Virginia has borne here share of this common burden, especially in view of the trials and adversity through which she has passed? During four long years she withstood the shock of battle, and came out of that trying ordeal crushed, impoverished and dismembered. Then followed the night of reconstruction, when for five years she endured the bitterness and humiliation of military rule. But so soon as she regained control of her own affairs she met her creditors and, in spite of her poverty, endeavored to do her duty by them.

In adjusting her liability with her creditors and providing for its payment she has done all that she could do, and no more could be expected of her. The trials and sacrifices through which she has passed have left no trace of bitterness—least of all does she cherish any resentment against her youngest daughter. On the contrary, she rejoices in the wealth and power with which a benignant Providence has blessed you. She only appeals to you not to let pass the present golden opportunity to finally dispose of the only remaining question in connection with her public debt. She earnestly hopes that her suggestion will commend itself to your good judgment, and that your legislature will authorize the appointment of commissioners, with power to co-operate with us in stating the ac-
124 count between the two states. If, however, your action shall be unfavorable, Virginia will feel that she has done her duty, and that responsibility for the consequences will not lie at her door.

In taking leave of you, gentlemen, I cannot refrain, on behalf of myself and associates, including the attorney general, an eminent citizen of my state, from expressing to you our sincere appreciation of the cordial reception accorded us here not only by His Excellency, your governor, but by your committees to-night. I can

assure you that whatever may be the result of our mission, we will recall with pleasure the considerate attention you have shown us.

125 Memorandum of agreement, made this 14th. day of December, 1904, between the Depositing Committee of the securities known as the Virginia Deferred Certificates as constituted under the contract of July 28th, 1898, and of which John Crosby Brown is Chairman, and Robert L. Harrison, Secretary, acting under the plan of settlement approved on December 3rd. 1902, by the Advisory Board referred to in the said contract, hereinafter referred to as the Depositing Committee, party of the first part, and the Commission constituted on behalf of the State of Virginia for the purpose of bringing about a settlement with the State of West Virginia with respect to said certificates as constituted and acting under the joint resolution of the General Assembly of the State of Virginia, approved March 6, 1894, and the act of said General Assembly, approved March 6, 1900 and of which John B. Moon is Chairman, and Joseph Button is Secretary hereinafter referred to as the Virginia Commission, party of the second part:

Whereas, by an agreement entered into between the above parties on the 18th day of September, 1902, certain of the certificates aforesaid amounting in the aggregate to $10,347,570.85 were tendered by the Depositing Committee Aforesaid to the said Virginia Commission, and were placed subject to the control of the said Commission upon the agreement and arrangement on the part of the said Commission acting for the State of Virginia under the said joint resolution and Act of Assembly aforesaid, that the said Commission should enter into negotiations with the State of West Virginia or the constituted authorities thereof for the purpose of effecting with West Virginia a settlement with respect to the said certificates, in accordance with the said contract of July 28th. 1898, and in accordance with such plan of settlement as was then proposed or might thereafter become effective, and that the said Commission would, by and with the advice and approval of the Attorney General of Virginia, take such action as they might deem needful in the premises; and that in the event such a settlement was so made, then it
126 was agreed that the amount realized thereon should be accepted in full satisfaction of all the claims of the certificate-holders thereunder, and that the said Committee would surrender to the said Commission, in exchange for such amount, the certificates so placed subject to the control of said Commission. And it was further specified in the said agreement of September 18, 1902, that the same should apply to and include all such certificates as might thereafter be deposited with and held by the said Committee under the said contract of July 28, 1898, and that the said agreement should constitute an arrangement and contract between the said Committee acting for the said certificate-holders with the State of Virginia for obtaining a settlement with West Virginia, and that the same should continue binding upon the parties and upon the

holders of the certificates so deposited for the three years next ensuing from the date of the said agreement; that is to say, until the 18th. day of September 1905. And the said agreement further provided that the same should be subject to renewal and extension for such further time as might be agreed upon between the parties and to such modification and amendment as might thereafter be agreed upon; and

Whereas, the said agreement of September 18, 1902, was approved by the Hon. William A. Anderson, Attorney General of Virginia, by his endorsement at the foot thereof on the 29th. day of September 1902; and

Whereas, the provisions of the said agreement last named were fully approved and recommended on the 3rd. day of December, 1902, by the Advisory Board referred to in the said contract of July 28, 1898 as appears by the plan of settlement made and approved by the said Committee and the Advisory Board and bearing date December 3rd. 1902, of which plan of settlement publication was duly made as provided in the said contract of July 28, 1898, and no notification whatsoever was given to the said Committee, either directly or through any depository, by any of the holders of the deposited certificates, of their unwillingness to accept the proposed set-
127 tlement as set forth in the said plan so published and more than thirty days having elapsed after the said publication was completed, and the said plan of settlement having therefore become complete; and of this fact the declaration in writing of the Committee having been duly made to the only depository under the said contract, to wit Messrs. Brown Brothers & Company, of 59. Wall Street, New York, the said plan of settlement thereupon became effective and final; and

Whereas, it is now proposed under the terms of the said agreement of September 18, 1902, and by way of modification thereof as therein provided, to place more fully and completely under the control of the said Virginia Commission all the certificates aforesaid which had up to that date been deposited, and also all thereafter deposited so that the said Virginia Commission may be given full and complete control of all the said certificates in their proposed negotiations with the State of West Virginia, and also in any action and proceeding which may be taken or instituted by the said Virginia Commission by and with the advice and approval of the said Attorney General under the said Act of the General Assembly of Virginia March 6, 1900:

Now therefore this agreement witnesseth: that the aforesaid Depositing Committee does hereby authorize and direct their said Depository Messrs. Brown Brothers & Company to issue to the Virginia Debt Commission a certificate that all the aforesaid Virginia Deferred Certificates which have up to this time been deposited with the said Brown Brothers and Company under the said depositing agreement of July 28, 1898, and all which may hereafter and before the 18th. day of September, 1905, be so deposited with the said depository are held by the said depository on deposit for and subject in all respects to the control and disposition of the said Virginia Commission in

pursuance on the said joint resolution and Act of the General Assembly of Virginia; and to this end the said Messrs. Brown Brothers & Company are authorized and instructed to issue such cer-
128 tificate to the said Virginia Commission in such form as to show that all of the certificates aforesaid have been received and are held by them on deposit for the said Virginia Commission and subject to the control and disposal of the said Commission:

But this agreement shall continue in force only until the said 18. day of September 1905, when the said certificate issued by the said Brown Brothers and Company to the said Virginia Commission for the purpose of making a settlement with West Virginia as aforesaid shall be returned to the said Depositing Committee, unless a settlement shall have been before that time negotiated with West Virginia in pursuance of said contract of September 18th. 1902, or unless negotiations be then pending with the properly constituted authorities of West Virginia for such settlement upon some equitable basis which has been agreed to by said Commission and the authorities of West Virginia aforesaid. Provided, however, that it is fully understood and agreed that the time for continuing in force this agreement may be extended by the consent and agreement of the parties hereto indorsed hereon or at the foot hereof, for such length of time and upon such conditions as the parties may hereafter specify; and this agreement may be changed, modified and amended with respect to the action and proceedings to be taken or instituted by the said Commission in the premises, as may hereafter be agreed upon by the parties and the indorsed as aforesaid, or as may be specified in a further and supplemental agreement between the parties.

In testimony whereof the signatures of the Chairman of the said Depositing Committee and of the Virginia Commission, attested by the respective Secretaries thereof, are hereunto affixed on the day and year first above written.

JOHN CROSBY BROWN, *Chairman.*
ROBERT L. HARRISON, *Secretary.*

JOHN B. MOON,
Chairman of Virginia Commission.
JOSEPH BUTTON, *Secretary.*

129 The foregoing agreement is hereby approved as having been entered into by my advice and approval.
Dated December 14, 1904.

WILLIAM A. ANDERSON,
Attorney General of Virginia.

130 The foregoing agreement of December 14th, 1904, together with the contract of September 18th, 1902, therein referred to, are hereby extended in all their provisions until December 1st 1905, and they shall remain in full force until that date just as if December 1st 1905 instead of Sept. 18th, 1905, had been the date originally named therein for their limitation, with the right of extension, en-

largement and modification on or before Dec. 1st, 1905, in all respects as therein specified.

Given under our hands this 9th day of September, 1905.

JOHN CROSBY BROWN,
Chairman Depositing Committee.

ROBT. L. HARRISON, *Secretary.*

JOHN B. MOON,
Chairman Virginia Commission.

JOS. BUTTON, *Secretary.*

The above extension of the contracts above referred to is hereby approved, this 9th day of September, 1905.

WILLIAM A. ANDERSON,
Attorney General of Virginia.

131 Upon the execution of the foregoing contract of December 14, 1904, hereto annexed, Messrs. Brown Bros. & Co., Bankers of New York, N. Y., the depository referred to in said contract, issued to the Virginia Commission therein named the certificate provided for in said contract, which was also in the form of a receipt and showed that Virginia deferred certificates of 1871 to the amount of $10,639,776.42 and certificates of other dates to the amount of $2,270,779.47 were held by said Brown Bros. & Co. on deposit for and subject to the control and disposal of said Commission; thus placing subject to the complete control and disposal of the Commission considerably more than two-thirds of the total of $12,703,451.79 of the certificates of 1871 outstanding and in the hands of the public, and a large majority of the total of $2,778,239.80 of the other certificates so outstanding.

Thereafter, in January and February, 1905, the Virginia Commission, through its properly constituted sub-committee acting with the Attorney General of Virginia, made to the Governor and Attorney General of West Virginia, and to the Finance Committees of the Legislature of that State, which was then in session, a full statement and presentation of the matters outstanding and unsettled between the two States in connection with the deferred certificates aforesaid, accompanied by an urgent plea on behalf of the State of Virginia that the Legislature of West Virginia would, at least, appoint a Committee or other public functionery with authority to take up the questions involved for the purposes of discussion and negotiation, but the Commission was again met, as it had been in a previous attempt to open negotiations on the subject, by an absolute refusal on the part of the authorities of West Virginia to treat on the subject at all; thus leaving to the Virginia Commission and Attorney

132 General of that State no possible means of bringing about the settlement, which they are charged with the responsibility of making, except by a resort to the Court having jurisdiction of controversies between States.

Now, therefore, it is hereby stipulated and agreed by and between the Depositing Committee, named as the party of the first part in

the said foregoing contract of December 14th, 1904, and the Virginia Commission therein named as the party of the second part, the said Commission acting in this behalf by and with the advice and approval of the Attorney General of Virginia, that in accordance with the provisions contained in the said foregoing contract and addendum thereto of September 9th, 1905, the same is hereby amended, modified and extended as follows, to wit:

1st. Neither the said foregoing contract of December 14th, 1904, nor the contract therein referred to between the same parties, bearing date September 18th, 1902, shall expire on the 1st. day of December, 1905, but the same shall continue in force in all respects just as if no time limit had been named in either of said contracts, and this agreement shall be taken as a continuation, modification and extension of said contracts.

2nd. The certificate or certificates heretofore given by Brown Bros. & Co., the depository of the said Committee, to the said Virginia Commission, covering the deferred certificates aforesaid, shall be retained by the said Commission and shall remain in full force and effect without regard to time limit; and the said Brown Bros. & Co. shall issue and give to the said Commission such other and further certificates and receipts in the premises, by way of amendment or in lieu of those already given or otherwise, as may be deemed needful or desirable in order to place said deferred certificates more completely and finally under the control and at the disposal of
133 the said Commission for the purpose of carrying out this agreement; and especially shall they give such certificates or receipts to cover all such Virginia deferred certificates as have been or may be deposited with them and not covered by certificates or receipts previously given to the Commission; and the said Virginia Commission are hereby given and invested with the full and complete control and right to dispose of all deferred certificates now or hereafter covered by or embraced in the receipts and certificates of Brown Bros. & Co., as aforesaid.

3rd. The said Virginia Commission hereby stipulate and agree, by and with the advice and approval of the Attorney General of Virginia, that, in their judgment, it is needful and proper, in order to protect the interest of the State and bring about and carry into effect a settlement in the premises, that a suit should be instituted in the name of the State of Virginia against the State of West Virginia in the Supreme Court of the United States asking for an adjudication and settlement by that Court of the matters aforesaid unsettled and undetermined between the two States, arising or growing out of the debt of the original State of Virginia before its dismemberment and on account of which said deferred certificates were issued, the same to be brought and instituted as provided in the Act of the General Assembly of Virginia, of March 6th, 1900, referred to in said con-

tract of December 14th, 1904; and the said Virginia Commission, acting by and with the advice and approval of the Attorney General of that State, do hereby undertake and agree that such a suit shall be brought against the State of West Virginia for the purpose of obtaining a settlement as aforesaid, as soon as the pleadings, papers and documents relating thereto can be conveniently and properly drawn up and prepared for presentation to the said
134 Court, which said suit shall be instituted, conducted and proceeded with in all respects in accordance with the provisions of the said Act of the General Assembly of Virginia and the Joint Resolution of the said General Assembly of March 6th, 1894, also referred to in said contract of December 14th, 1904; but the power to make and carry into effect a settlement and adjustment in the premises by agreement with West Virginia as to the deferred certificates placed subject to the control of the Commission as aforesaid, as provided in the previous contracts aforesaid, shall remain vested in the said Commission, notwithstanding the institution and pendency of such suit.

4th. And the Virginia Commission do further undertake and agree that, in accordance with the terms and conditions of the said Joint Resolution and Act of the General Assembly of Virginia, they will account for, pay over and deliver such amount, either in cash or securities, as may be realized from West Virginia through any settlement made by the said Commission with that State, either by means of an adjudication or recovery in said suit or otherwise, for or on account of the deferred certificates now or hereafter deposited and placed subject to their control as aforesaid, to the said Depositing Committee in full settlement and satisfaction of all claims under said certificates; and the said Depositing Committee agrees on behalf of the depositors of said deferred certificates so placed subject to the control of the said Commission and on behalf of those entitled to the benefit of said certificates as assignees of said depositors or otherwise to accept as aforesaid such amount, either in cash or securities, as may be determined or ascertained in any such suit to be due by, or as may be realized through any adjustment or settlement as aforesaid
135 from the State of West Virginia on account of the said certificates and on account of the bonds represented by and mentioned in the said certificates respectively, in full settlement and satisfaction of all claims on account of said certificates and on account of the bonds therein mentioned, and to accept and take such adjudication against the State of West Virginia in full discharge and acquittance of all claims in the premises against the State of Virginia.

5th. It is further understood and agreed that if from any cause the said Commission shall fail or be unable to bring about such adjustment or settlement or to obtain a determination or ascertainment of the liability of West Virginia as hereinbefore provided for, then it shall be the duty of the said Commission to restore to the control of the said Depositing Committee all such deferred certificates

as may have been placed subject to the control and disposal of said Commission as aforesaid.

Richmond, Va., November 24th, 1905.

JOHN CROSBY BROWN, *Chairman.*
R. P. CHEW,
WM. C. LEGENDRE,
CLARENCE CARY,
J. KENNEDY TOD,
GEO. F. BAKER,
BARLETT S. JOHNSTON,
Depositing Committee.

JOHN B. MOON,
WM. F. RHEA,
H. D. FLOOD,
H. H. DOWNING,
H. T. WICKHAM,
RANDOLPH HARRISON,
J. THOMPSON BROWN,
Virginia Commission.

Attest:
JOS. BUTTON,
Sec'ty Va. Commission.
RO. L. HARRISON,
Secretary Committee.

136 The foregoing contract of this date was entered into by and with the advice and approval of the undersigned, William A. Anderson, Attorney General of Virginia, as in said contract stated and set forth; and the same is concurred in by him as such Attorney General.

Richmond, Va., November 24th, 1905.

(Signed) WILLIAM A. ANDERSON,
Attorney General of Virginia.

137 This is to certify that we, the undersigned, Brown Brothers & Company (Bankers), of 59 Wall Street, New York City, N. Y., have received of the Commission of the State of Virginia, constituted and authorized to act with respect to the securities known as the Virginia Deferred Certificates under a joint resolution of the General Assembly of Virginia approved March 6, 1894, and an act of the said General Assembly approved March 6, 1900, and of which John B. Moon, of Charlottesville, Va., is Chairman, and Joseph Button, of Appomattox, Va., is secretary, the following Virginia Deferred Certificates, which we hold on deposit for and subject to the control and disposition of said Commission, to wit:

Certificates of 1871:			
Principal.....	.....	$9,317,009.30	
Sterling scrip.....	$10,666.66		
Dollar scrip.....	32,387.00	43,053.66	
			$9,360,062.96
Certificates of 1879:			
Principal.....	.....	$403,362.62	
Dollar scrip.....	$33,890.83		
Sterling scrip.....	3,389.16	37,279.99	
			440,642.61
Certificates of 1882:			
Principal.....	.....	$716,416.07	
Scrip.....	.....	545,787.36	
			1,262,203.43
Certificates of 1892:			
Principal.....	.....	$259,825.71	
		284,563.93	
			544,389.64
			$11,607,298.64

And we further agree to hold on deposit for and subject to the control of said Commission as aforesaid such further certificates as may be deposited with us through or for the said Commission, between this and the 18th day of September, 1905.

Given under our hands this 14th day of December, 1904.

BROWN BROTHERS & CO.

138 Brown Brothers & Co., 59 Wall Street.

West Virginia Debt Settlement.

(C)

NEW YORK, *January 23rd*, 1905.

Hon. John B. Moon, chairman Virginia debt commission, Charlottesville, Va.

DEAR SIR: Since we gave you the receipt and certificate of Deposit of December 14th, 1904, there have been deposited with us, and we hold for and subject to the control and disposition of your Commission, the following Virginia Deferred Certificates:

Issued under act of 1871, to amount of.....				$1,279,713.46
do.	1882,	do.	....	23,477.12
do.	1892,	do.	.....	66.67
Total additional certificates.....				$1,303,257.25

These certificates are held by us for your Commission in like manner, and on the same terms and conditions as those specified in our said receipt and certificate of December 14th, 1904.

We remain, yours very truly,

BROWN BROTHERS & CO.

P. S.—The complete statement is as follows:

Issue of 1871:			
Principal		$10,596,402.76	
Sterling scrip	$10,666.66		
Dollar scrip	32,707.00	43,373.66	
			$10,639,776.42
Issue of 1879:			
Principal		$403,362.62	
Dollar scrip	$33,890.83		
Sterling scrip	3,389.16	37,279.99	
			440,642.61
Issue of 1882:			
Principal		$738,819.72	
Scrip		546,860.83	
			1,285,680.55
Issue of 1892:			
Principal		$259,825.71	
Scrip		284,630.60	
			544,456.31
Total deposit to January 23rd, 1905			$12,910,555.89

B. B. & CO.

139 Brown Brothers & Co., 59 Wall Street.

West Virginia Debt Settlement. (T.)

NEW YORK, *January 4th*, 1906.

Hon. John B. Moon, chairman Virginia debt commission, Charlottesville, Va.

DEAR SIR: Since we gave you the receipt and Certificate of Deposit of December 14th, 1904, there have been deposited with us, and we hold for and subject to the control and disposition of your Commission, the following Virginia Deferred Certificates:

Issued under the act of	1871,	to amount of	.....	$1,491,231.13
do.	1879,	do.	.....	23,250.00
do.	1882,	do.	.....	51,588.97
do.	1892,	do.	.....	66.67
Total additional certificates			.....	$1,566,136.77

These certificates are held by us for your Commission in like manner, and on the same terms and conditions as those specified in our said receipt and Certificate of December 14th, 1904.

We remain, yours very truly,

BROWN BROTHERS & CO.

P. S.—The complete statement is as follows:

Issue of 1871:			
Principal		$10,806,785.43	
Sterling scrip	$10,666.66		
Dollar scrip	33,842.00	44,508.66	
			$10,851,294.09
Issue of 1879:			
Principal		$426,612.62	
Dollar scrip	$33,890.83		
Sterling scrip	3,389.16	37,279.99	
			463,892.61
Issue of 1882:			
Principal		$757,653.05	
Scrip		556,139.35	
			1,313,792.40
Issue of 1892:			
Principal		$259,825.71	
Scrip		284,630.60	
			544,456.31
Total deposit to January 4th, 1906			13,173,435.41

BROWN BROTHERS & CO.

140 STATE OF NEW YORK, *County of New York,* } *To-wit:*

I, Wm. Gerard Vermilye, being first duly sworn, do depose and say that I am one of the Cashiers of Brown Brothers & Co., bankers of New York, N. Y., and have charge of their vaults and of the securities therein deposited, including the securities known as Virginia Deferred Certificates, and that I have had charge of the filing of said certificates deposited with said Brown Brothers & Co. and of the keeping of a record thereof as filed; and that the statement or certificate of the said Brown Brothers & Co. hereunto annexed made to John B. Moon, Chairman of the Virginia Debt Commission, bearing date January 4th, 1906, correctly sets forth the said Virginia Deferred Certificates so deposited and placed in the vaults of said Brown Brothers & Co. which said certificates to the amount set forth in said statement of Brown Brothers & Co. have been by order of the said Virginia Commission this day placed in sealed boxes and transferred to the Central Trust Company of New York, N. Y.

WM. GERARD VERMILYE.

The foregoing affidavit was this day subscribed and sworn to by Wm. Gerard Vermilye before me, a Notary Public in and for the State and County of New York.

Given under my hand and Notarial Seal this 5th day of January, 1906.

LEGRAND VAN VALKENBURGH,
[NOTARIAL SEAL.] *Notary Public, Kings County.*

Certificate filed in New York County.

141 Central Trust Company of New York.

54 WALL STREET, *January 5th*, 1906.

The undersigned, the Central Trust Company of New York, N. Y., hereby certifies and acknowledges that it has this day received from Brown Brothers & Co. three boxes under seal said to contain the Virginia Deferred Certificates to the amount of $13,173,435.41 referred to in the communication of said Brown Brothers & Company to John B. Moon, Chairman of the Virginia Commission, bearing date January 4th, 1906, which said sealed boxes and their contents are held by the undersigned Trust Company on deposit for and subject to the order and control of the Virginia Commission, constituted and authorized to act with respect to said Deferred Certificates under a joint resolution of the General Assembly of the State of Virginia, approved March 6th, 1894, and an act of the said General Assembly approved March 6th, 1900, of which John B. Moon, of Charlottesville, Va., is Chairman, and Joseph Button, of Apponattox, Va., is Secretary, the said certificates having been turned over to the undersigned Trust Company by said Brown Brothers & Company to be held by the undersigned on deposit for and subject to the control and disposal of said Virginia Commission as above stated.

CENTRAL TRUST CO., OF N. Y.,
(Signed) F. L. GRANT, *Sec'y.*

142 Virginia, Second Auditor's Office.

(Statement Made Sept. 17, 1902.)

West Virginia Certificates Issued by Virginia in Funding Her Debt.

			In hands of the public.
Act March 30, 1871	$15,281,970.47		
" " " " held by Com.			
" " " " sinking fund	2,026,439.39		
" " " " literary fund	552,079.29		
		$2,578,518.68	
			$12,703,451.79
Act March 28, 1879			564,258.87
Act Feb. 14, 1882		1,775,603.48	
Held by literary fund		166,943.33	
			1,608,660.15
Act Feb. 20, 1892			605,320.78
Total amount in the hands of the public			15,481,691.59
Total amount held by the Com. S. fund			2,026,439.39
Total amount held by the literary fund			719,022.62
Total amount of W. Va. script issued			18,227,153.60
In hands of public		$15,481,691.59	
Held by State of Virginia		2,745,462.01	
Total issue of W. Va. script		$18,227,153.60	

I hereby certify that the above statement correctly sets forth the amount of West Virginia certificates, issued by Virginia in funding her oid obligations, as shown by the books of this office.

(Signed) JNO. G. DEW,
Second Auditor of Virginia.